CITIZENSHIP IN THE CHOCTAW AND CHICKASAW NATIONS

HEARINGS

BEFORE A SUBCOMMITTEE OF THE COMMITTEE ON INDIAN AFFAIRS, U.S. HOUSE OF REPRESENTATIVES

ON

H. R. 15649

WASHINGTON
GOVERNMENT PRINTING OFFICE
1908

[H. R. 15649, Sixtieth Congress, first session.]

A BILL Extending the provisions of an act approved February sixth, nineteen hundred and one, entitled "An act amending the act of August fifteenth, eighteen hundred and ninety-four, entitled 'An act making appropriations for current and contingent expenses of the Indian Department and fulfilling treaties and stipulations with various Indian tribes for the fiscal year ending June thirtieth, eighteen hundred and ninety-five, and for other purposes,'" to any person claiming any right in the common property of the Choctaw or Chickasaw Indians or tribes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the provisions of an act approved February sixth, nineteen hundred and one (chapter two hundred and seventeen, United States Statutes at Large, Fifty-sixth Congress), entitled "An act amending the act of August fifteenth, eighteen hundred and ninety-four, entitled 'An act making appropriations for current and contingent expenses of the Indian Department and fulfilling treaties and stipulations with various Indian tribes for the fiscal year ending June thirtieth, eighteen hundred and ninety-five, and for other purposes,'" be, and the same is hereby, extended to any person claiming any right in the common property of the Choctaw or Chickasaw Indians or tribes; and in order to make said act applicable to any person claiming any such right in said property said act is hereby amended to read as follows:

"SEC. 2. That all persons who are in whole or in part of Choctaw or Chickasaw blood or descent and who are entitled to share in the common property of the Choctaw or Chickasaw Indians under any treaty with said Indians or law of Congress, or who claim to be so entitled under any treaty, grant, agreement, or act of Congress, or who claim to have been unlawfully denied or excluded from participating in the common property of the Choctaws or Chickasaws to which they claim to be lawfully entitled by virtue of any treaty, grant, agreement, or act of Congress, may commence and prosecute or defend any action, suit, or proceeding in relation to their right thereto in the proper district or circuit court of the United States; and said district and circuit courts are hereby given jurisdiction to hear, try, and determine any action, suit, or proceeding arising within their respective jurisdiction and involving the right of any person, in whole or in part of Indian blood or descent, to share in the common property of said Choctaw or Chickasaw Indians under any treaty, grant, agreement, or law of Congress (and in said suit the parties thereto shall be the claimant as plaintiff, and the Choctaw and Chickasaw nation or tribes jointly as party defendant); and the judgment or decree of any such court in favor of any claimant to share in the common property of said tribes shall have the same effect, when properly certified to the Secretary of the Interior, as if such judgment or decree had been allowed and approved by him: *Provided*, That the right of appeal shall be allowed to either party as in other cases, and that no act of Congress or agreement limiting

the time in which an application or assertion of right should be made shall operate to defeat the rights of any person entitled to share in the said common property under any treaty with or grant to said Indians.

"SEC. 3. That the plaintiff shall cause a copy of his petition, filed under the preceding section, to be served upon the district attorney of the United States in the district wherein suit is brought, and shall mail copies of same, by registered letters, to the principal chief or governor of the Choctaw and Chickasaw nations, respectively, and shall thereupon cause to be filed with the clerk of the court wherein suit is instituted an affidavit of such service and the mailing of such letters. It shall be the duty of the district attorney upon whom service of petition is made as aforesaid to appear and defend the interests of the Choctaw and Chickasaw nations in the suit, and within sixty days after the service of petition upon him, unless the time should be extended by order of the court made in the case, to file a plea, answer, or demurrer on the part of the Indian governments or tribes, and to file a notice of any counterclaim, set-off, claim for damages, or other demand or defense whatsoever in the premises: *Provided*, That should the district attorney neglect or refuse to file the plea, answer, demurrer, or defense, as required, the plaintiff may proceed with the case under such rules as the court may adopt in the premises; but the plaintiff shall not have judgment or decree for his claim, or any part thereof, unless he shall establish the same by proof satisfactory to the court.

"SEC. 4. That whenever it shall appear to the satisfaction of the court in which the proceedings has been instituted that there is in the possession of any department of the Government or of any bureau, division, or commission thereof or thereunder, any record or records material to the proper determination of the issue being heard, or about to be heard, the head of the department in which such record is kept shall, upon request of the judge of said court, transmit a certified copy of the record or records on file in his department to the clerk of the court to be used at the trial of the case without any charge therefor: *Provided further*, That all records in the possession or custody of any Government officer or department or division, bureau, or commission thereof or thereunder pertaining or appertaining to the rights of any such claimant shall, upon request of the claimant or his authorized attorney, be open to inspection: *Provided further*, That all suits brought under the provisions of this act shall be commenced within six months after the passage of this act, and the court, upon the request of either the plaintiff or defendant, shall advance any suit instituted under the provisions of this act on the dockets thereof to as early hearing as is consistent with the rights of the parties and the interests involved."

CITIZENSHIP IN THE CHOCTAW AND CHICKASAW NATIONS.

COMMITTEE ON INDIAN AFFAIRS,
HOUSE OF REPRESENTATIVES,
February 25, 1908.

Present: Hon. B. S. McGuire (chairman), Hon. E. A. Morse, and Hon. John H. Stephens.

Webster Ballinger and Albert J. Lee appeared for claimants. George A. Ward, attorney for the Indian Bureau, present and representing the Department of the Interior.

Mr. Webster Ballinger addressed the committee as follows:

Mr. Chairman and gentlemen of the committee, the bill (H. R. 15649) now before you for consideration, if enacted into law will afford an opportunity to about 12,000 persons, admittedly of Choctaw or Chickasaw Indian blood and descent, and who allege—and that allegation is abundantly sustained by the record in this case—that they have a vested right in the common property of the Choctaw and Chickasaw Indians by reason of their Indian blood and descent. They allege—and this allegation is also abundantly sustained by the record—that certain administrative officers, charged by law with the duty of ascertaining their Indian blood and descent and determining their rights, denied them enrollment as members of the tribes, and thereby denied their right to share in the common trust property of the Choctaws and Chickasaws through (1) error of law; (2) gross mistake of fact; (3) actual fraud committed by said administrative officers.

The bill under consideration proposes to extend to these 12,000 people, who are of Indian blood, some of them full blood, and who are now citizens of the United States, the right to go into the Federal courts under the provisions of the act approved February 6, 1901, and which act is in force in every State and Territory in this Union and applicable to every citizen and noncitizen occupant of an Indian reservation, excepting only the members of the Five Civilized Tribes and the Quapaw Indians, which tribes were expressly excepted from the operations of said act, and have a court of competent jurisdiction, free from the suspicion and taint of fraud, determine their property rights. These 12,000 people are admittedly a part of the designated class of people for whose benefit the grant was made, and they ask you to enact this bill which will permit them to go into a Federal court, and there in open court with notice to all the world, and with the officers of the Department of Justice there to dispute their claim, to offer their evidence and have their claims determined according to law. Surely this is not an unreasonable request. It is a right freely enjoyed to-day by every claimant to Indian property in every State and Territory of this Union excepting claimants to property in the Five Civilized Tribes and the Quapaw Nation. Will

you deny to these people a right which you have given by legislation to not only citizens of the United States, as these people are, but to noncitizen occupants of Indian reservations? They do not ask you for any special privileges. They are not mendicants and beggars. They are demanding the right to go into a constitutional court and have their claims decided once and for all time by the Federal courts, a right given to every other person in this land claiming rights in Indian property, but which by your legislation in the past you denied to them.

Mr. Chairman, these 12,000 claimants assert a right to share in this common trust property and base that right upon a treaty entered into with the Choctaw Nation in 1830, under which the property in controversy was conveyed to the Choctaw Nation in fee simple in trust for the exclusive use and benefit of those persons who comprised the Choctaw community of Indians on the day the treaty of 1830 was ratified and their descendants. Article 2 of the treaty of 1830 provides:

> The United States, under a grant specially to be made by the President of the United States, shall cause to be conveyed to the Choctaw Nation a tract of country west of the Mississippi River, in fee simple to them and their descendants, to inure to them while they shall exist as a nation and live on it.

Then follows a description of the land. The words appearing in this article, "in fee simple to them and their descendants, to inure to them while they shall exist as a nation and live on it," were inserted, as the journal record of the negotiations which resulted in this treaty shows, at the instance of the Indians, who refused to sign the treaty unless the conveyance was made in fee simple and the United States absolutely and irrevocably passed all its right, title, and interest in and to the lands to the Indians, which property was to be exclusively to the use of those persons who comprised the Choctaw Nation and their descendants and no other person was to ever share in the same, and the United States guaranteed that the terms of the treaty should be strictly adhered to by the Federal Government.

In order that we may frame an issue before the committee I now ask Mr. Ward, who is present and representing the Department, whether the Department denies that the title to this property was acquired under and by virtue of the second article of the treaty of 1830, which I have just read.

Mr. WARD. We deny that the grant to the Choctaws was made under the treaty of 1830 and insist that the conveyance was made under the treaty of 1820.

Mr. BALLINGER. Mr. Chairman, I am glad to know the exact contention of the Department upon this question, for it is the first time that the Department or any attorney representing these nations has ever disputed our contention that the conveyances was made under and pursuant to the second article of the treaty of 1830.

No lawyer has ever heretofore asserted that the conveyance of the property in controversy was made under and by virtue of the treaty of 1820, and I submit that no person who has examined into the question and who possesses even a rudimentary knowledge of law, or who has ever opened the covers of Blackstone would seriously make such an assertion. Let us now examine this treaty under which the De-

partment contends this grant was made. Article 2 of the treaty of 1820 provides:

> For and in consideration of the foregoing cession on the part of the Choctaw Nation, and in part satisfaction for the same, the commissioners of the United States, in behalf of said States, do hereby cede to said nation a tract of country west of the Mississippi River, situate between the Arkansas and Red River, and bounded as follows.

This treaty does not even purport to pass a fee to the property in controversy. Under this provision of the treaty of 1820 a conveyance of the right of occupancy only was made to the land which forms the subject of this controversy. The treaty says:

> The commissioners of the United States, in behalf of said States, do hereby cede to said nation a tract of country west of the Mississippi River.

There was no mention of a conveyance of a fee, and it was because the Indians discovered that this treaty did not convey to them an absolute title to the lands in controversy that they refused to comply with the treaty and remove to and settle on the western lands. They held their eastern land located in Alabama and Mississippi on the same terms that it was proposed to cede to them by this treaty the western lands. The white settlers in Alabama and Mississippi had been constantly encroaching upon their lands, and taking them from the Choctaws at pleasure. The Indians found themselves powerless to resist these encroachments, and the correspondence and negotiations conducted after this treaty was ratified, and which culminated in the treaty of 1830, shows conclusively that the reason the Choctaws would not accept the provisions of the treaty of 1820 was that by the terms and provisions of that treaty they had no greater security against encroachment upon their western lands than they had against encroachments upon their eastern lands, to which latter lands they held also the possessory title only.

The attempt on the part of the authorities of Alabama and Mississippi to enforce the State laws against the Choctaws and the encroachment of the white settlers upon their lands culminated in the Choctaws, on the 17th day of March, 1830 (and prior to the enactment of the act approved May 28, 1830), submitting to President Jackson a draft of a proposed treaty for the cession of all their lands east of the Mississippi River to the United States, the conveyance by the Government to them of a full and perfect title in fee simple to the western lands, and their removal thereto.

President Jackson redrafted the proposed treaty—making many changes and alterations in practically all of the articles, except article 1, which provided for the conveyance of the western lands to the Choctaws—in which draft it was expressly stated that the title to be conveyed must be a full and perfect title in fee simple, and on the 6th day of May, 1830, he transmitted the two drafts of the proposed treaty, accompanied by a protest signed by certain persons claiming to be full bloods, and a special message explanatory thereof, to the Senate of the United States, by special message explanatory thereof, and requested the views of the Senate with reference to the terms upon which it might be advisable to conclude a treaty with the Choctaws. (Messages and Papers of the Presidents, vol. 2, p. 479.)

Articles 1 and 30 of the proposed treaty, as drafted by the Choctaws and transmitted to President Jackson, provided in part as follows:

ARTICLE 1. The United States shall secure to the said Choctaw Nation of red people the perpetual peaceful possession of all that tract of country known and described in the treaty as the Choctaw land west of the Mississippi River, embraced in the following lines and limits, viz: * * * and immediately on the ratification of this treaty a patent shall be issued by the President of the United States granting and transferring to the said Choctaw Nation of red people a full and perfect title in fee simple to all the land within the before-described limits, and forever warranting and defending the peaceable possession of the same to the Choctaw Nation, their descendants, and citizens.

* * * * * * *

ART. 30. This treaty is the only proposition that the Choctaw Nation will ever make to the United States, and proposes the only terms on which the said nation will emigrate to the West; * * *

Article 1 of the treaty proposed by the Choctaws, as amended by President Jackson and submitted to the Senate, was as follows:

The United States shall secure to the said Choctaw Nation of red people the perpetual peaceful possession of all that tract of country known and described in a treaty as the Choctaw lands west of the Mississippi River, embraced in the following lines and limits, viz:

* * * * * * *

And so soon after the ratification of this treaty as Congress shall authorize it a patent shall be issued by the President of the United States granting and transferring to the said Choctaw Nation of red people a full and perfect title in fee simple to all the land within the before-described limits, and forever warranting and defending the peaceable possession of the same to the Choctaw Nation and their descendants.

The Senate Committee on Indian Affairs stated in its report to the Senate that, after fully considering all the documents transmitted by the President relative to the proposed treaty with the Choctaws, it did not deem it admissible to recommend the ratification of the treaty, for, among other reasons, that one of the documents transmitted was a protest from one of the districts of the Choctaw Nation; that as the treaty had not been negotiated by Government officers after a poll of the nation, the committee had no way of knowing what percentage of the Choctaw people were in favor of making any treaty with the United States, and therefore recommended that the Senate advise the President by resolution not to " make or ratify " the proposed treaty. On May 27, 1830, the Senate adopted the following resolution:

Resolved, That the Senate do advise the President of the United States not to make or ratify the treaty which the Choctaw Indians have proposed in the project submitted to him dated the 17th day of March, 1830, and which accompanied his message to the Senate on the 6th instant. (Executive Journal, vol. 4, p. 111.)

PRESIDENT JACKSON'S REPRESENTATIONS TO THE CHOCTAWS AND CHICKASAWS.

President Jackson thereafter advised the Choctaws of the action of the Senate and informed them that he would meet the Choctaws and Chickasaws at Franklin, Tenn., and personally inform them of the policy and intentions of the Government, in order that a treaty might be negotiated which would be acceptable to the Senate.

President Jackson, accompanied by Secretary of War John H. Eaton and Gen. John Coffee, arrived at Franklin, Tenn., on Monday,

August 23, 1830. The Choctaws were not present. The Chickasaws, who were assembled, were addressed by President Jackson at some length, in which address the President urged the Chickasaws to consent to remove west of the Mississippi, and as an inducement to them pointed out that their new homes west of the Mississippi would be the property of them and their children. The President said:

Determine what may appear to you best to be done for the benefit of yourselves and your children. The only plan by which this can be done, and tranquillity for your people obtained, is that you pass across the Mississippi to a country in all respects equal, if not superior, to the one you have. Your Great Father will give it to you forever, that it may belong to you and your children while you shall exist as a nation, free from all interruption. (Senate Doc. 512, vol. 2, p. 240, 23d Cong., 1st sess.)

On the 26th of August the President and his associates met the Chickasaw delegates. J. McLish, secretary of the Chickasaw Nation, delivered the reply of the Chickasaws to the address of the President, in part, as follows:

FRIENDS AND BROTHERS: Our Father, the President, has communicated to us through you (Major Eaton and General Coffee) his earnest desire to make us a prosperous and happy people. To accomplish this great object, that is to us so desirable, he proposed to give us a country west of the Mississippi in exchange for the country we now possess, in fee simple, or, to use his own words, "as long as the grass grows and water runs." (Senate Doc. 512, vol. 2, p. 244, 23d Cong., 1st sess.)

President Jackson then instructed his commissioners, Secretary of War John H. Eaton and Gen. John Coffee, to continue the negotiations with the Chickasaws, and then proceed to Mississippi and conduct negotiations with the Choctaws, with the object in view of entering into treaties with both tribes, and especially instructed his commissioners "to act liberally toward them."

On September 15, 1830, Secretary of War John H. Eaton and Gen. John Coffee arrived at the Indian agency at Dancing Rabbit Creek, Mississippi, in pursuance of the instructions of President Jackson. Negotiations looking to the formulation of a treaty with the Choctaws were immediately thereafter commenced. (Journal of Proceedings, Senate Doc. 512, vol. 2, p. 251, 23d Cong., 1st sess.)

On September 18, 1830, Secretary of War John H. Eaton and Gen. John Coffee advised the Choctaws at the treaty grounds as follows:

BROTHERS: We have come a considerable distance to meet you, under the direction of your Great Father. He has invited you to meet and shake hands with him in Tennessee, that, as a friend and a father, he might speak with you. He was informed at Washington City that you desired it. Arriving at home, he sent Major Donley to you with news of his wishes, of his desire to converse with you on matters of deep and lasting interest to your nation. You refused to come, and returned for answer that you could not. Well might your Great Father then have said: "I will no more try to preserve you, but leave you to live as you can under the laws of the States." When thus he was about to determine to leave you and no more persuade you to a course of happiness, a messenger reached him, bearing from two of the three districts of your nation a memorial entreating that commissioners might be sent. Anxious still for those who had fought by his side in behalf of his country, he determined to yield that request and to send those who would speak his wishes freely and candidly, and thereby prove the desire he entertained to preserve you, notwithstanding his previous friendly offers had been rejected.

* * * * * * * *

BROTHERS: *In 1820, by a treaty* made with you at Doak's Stand by your present Great Father, *an extensive and fine country was given to you for the use of your people.* It was a gift to you, for the country you ceded to the United States

was paid for fully. It was the understanding at the time that the Choctaws would remove; and on that account was it that a large, salable, and fertile country was provided for your nation and your people. Ten years have passed by and you are still here. The country intended for you yet remains wild and unsettled.

BROTHERS: A fertile country beyond the Mississippi, and another possessed here, is more than you should expect. If you will not remove other Indian tribes may desire to do so; and, where they shall elect to settle, a home must be furnished; others wanting it, the country should not remain a desert. *You must decide which you will take and which you will live upon; both countries you can not possess—it is unreasonable to expect it.* If you prefer to live under our laws and customs, remain and do so, and surrender the lands assigned to you west of the Mississippi, or otherwise remove to them. There your Great Father can protect you; and there, undisturbed and uninterrupted by the whites, you can enjoy yourselves and be happy, now and for years to come. Rest assured you can not be so here. But, if you think differently, then continue where you are. After the present time we shall no more offer to treat with you. You have commissioners in your country for the last time. Hereafter you will be left to yourselves and the laws of the States within which you reside; and, when weary of them, your nation must remove as it can, and at its own expense. Whatever you may determine upon, whether to remove or to remain, our earnest and sincere wishes are that you may be happy and contented. For you we have the best feelings; our complexions are different, but our hearts and our nature are the same. The Great Spirit above is our common Father; He has made us all and we are all His.

Wednesday, 22.—The commissioners met the council at 10 o'clock, the chiefs and their captains present, except Netuchache, who was reported to be sick from the bite of a spider. Order and silence being had, the commissioners proposed, for their consideration and approval, the outlines of the treaty they were willing to enter into. It is as follows.

* * * * * * *

The chief, Leadstone, inquired if the present treaty was to be considered as retaining former treaties and their provisions, or as repealing all former treaties, and the present one only to be relied on? The answer was, *that it was desirable fully to embrace everything; that the present might be considered the only treaty that was to be looked to;* that, excepting former annuities, *all previous treaties were to be considered as revoked and set aside.* The council then separated.

The negotiations continued until September 27, 1830, when the treaty was signed.

Article 2 of this treaty, as I have heretofore shown the committee, provided that—

the President of the United States shall cause to be conveyed to the Choctaw Nation a tract of country west of the Mississippi River in fee simple, to them and their descendants, to inure to them while they shall exist as a nation and live on it.

Mr. MCGUIRE. Did any fee pass by the treaty of 1820?

Mr. BALLINGER. None whatever. The treaty of 1820 merely provided for the cession by the Federal Government of the possessory right to the western lands.

Mr. STEPHENS. From what treaty do you get the fee simple?

Mr. BALLINGER. From the treaty of 1830, which expressly provided that the President of the United States should by special grant convey the land in controversy to the Choctaw Nation in fee simple, in trust for the exclusive use and benefit of those persons who comprised the Choctaw community on the date of the ratification of the treaty of 1830 and their descendants.

Mr. STEPHENS. What is the distinctive difference between the treaties of 1820 and 1830?

Mr. BALLINGER. By the treaty of 1820 the Government conveyed to the Choctaw Nation, without limitation to any particular class of

people, the possessory title only to the lands in controversy. By the treaty of 1830 the United States covenanted and agreed that the land should be conveyed by a patent signed by the President of the United States to the Choctaw Nation in fee simple, in trust for the exclusive use and benefit of those persons who comprised the Choctaw community of Indians on the day the treaty of 1830 was ratified and their descendants. These are the distinctive differences between the two treaties, and they are as wide as the difference between realization and hope.

Mr. STEPHENS. Was there a patent issued under the treaty of 1820?

Mr. BALLINGER. No; there was no patent issued under the treaty of 1820. There was no necessity for the issuance of a patent, for there was in reality no conveyance made.

Mr. STEPHENS. Was there a patent issued under the treaty of 1830?

Mr. BALLINGER. Yes, and in strict conformity with the terms and provisions of that treaty. The patent itself recites that it was issued under and by virtue of article 2 of the treaty of 1830. The patent is as follows:

PATENT.

The United States of America, to all to whom these presents shall come, greeting:

Whereas, by the second article of the treaty began and held at Dancing Rabbit Creek, on the 15th day of September, in the year of our Lord 1830 (as ratified by the Senate of the United States, on the 24th of February, 1831), by the Commissioners on the part of the United States and the Mingoes, chiefs, captains, and warriors of the Choctaw Nation, on the part of said nation, it is provided that "the United States under a grant specially to be made by the President of the United States, shall cause to be conveyed to the Choctaw Nation" a tract of country west of the Mississippi River, in fee simple to them and their descendants, to inure to them while they shall exist as a nation and live on it: Beginning near Fort Smith, where the Arkansas boundary crosses the Arkansas River, running thence to the source of the Canadian fork, if in the limits of the United States, or to those limits; thence due south to Red River, and down Red River to the west boundary of the Territory of Arkansas; thence north along that line to the beginning. The boundary of the same to be agreeably to the treaty made and concluded at Washington City in the year 1825.

Now, know ye, that the United States of America in consideration of the premises, and in execution of the agreement and stipulation in the aforesaid treaty, have given and granted, and by these presents do give and grant, unto the said Choctaw Nation, the aforesaid "tract of country west of the Mississippi," to have and to hold the same, with all the rights, privileges, immunities, and appurtenances of whatsoever nature thereunto belonging, as intended, "to be conveyed" by the aforesaid article, in fee simple to them and their descendants to inure to them while they shall exist as a nation and live on it, liable to no transfer or alienation except to the United States or with their consent. (Recorded, vol. 1, p. 43, General Land Office.)

Possibly the officers of the Interior Department to-day should not be censured for their utter and absolute disregard of law in dealing with the rights of citizens of the United States, for we find in this patent, issued in the year 1842, administrative officers inserting provisions not authorized in the treaty under which it was issued. There was no authorization in the treaty for the last provision in this patent reading:

Liable to no transfer or alienation except to the United States or with their consent.

This provision not being authorized by the treaty, it is elementary law that the administrative officers could not have imposed this additional condition upon these people by the patent.

It was expressly understood by the contracting parties to the treaty of 1830 that that instrument should supersede, repeal, and annul every existing treaty between the Choctaws and the Government of the United States. Therefore, as the Choctaws had refused to accept the provisions of the treaty of 1820 and the Government of the United States had, through its representatives, informed the Choctaws that the treaty did not convey to them the title to the western land, it was therefore stipulated and agreed in the treaty of 1830 that the treaty of 1820 and all subsisting and existing treaties should be repealed and rendered null and void and that the treaty of 1830 should be the only treaty in existence between the Choctaw people and the Government of the United States. There can be no dispute upon this question, for the Supreme Court of the United States, in a unanimous opinion rendered in the case of The United States *v.* The Choctaw Nation (179 U. S., 508; 45 L. ed., 297), says what the second article of the treaty of 1830 did. The court says:

> It can not be doubted that the purpose of article 2 of the treaty of 1830 was to provide for a special grant to the Choctaws of the lands intended to be ceded to them by article 2 of the treaty of 1820, and no others.

Mr. Chairman, if the officers of the Department of the Interior would accept the pronouncement of the Supreme Court of the United States upon questions of law in passing upon the rights of citizens of the United States, we would not be compelled to come to Congress with controversies of this nature. Not only has this question, raised here to-day for the first time by the attorney for the Department, been settled by the Supreme Court of the United States, but in a suit pending before the circuit court of appeals, eighth circuit, sitting at St. Louis, entitled Bettie Ligon et al. *v.* Douglas H. Johnston et al., involving the very question of the nature of the title to all this land, the Government did not deem it expedient to raise this question in either their briefs or arguments filed or made in that case.

TREATY OF 1837.

Now, Mr. Chairman, following this treaty of 1830 with the Choctaws came the treaty of 1837 with the Chickasaws. That treaty was negotiated under the guidance and with the advice, consent, and approval of President Jackson and his administrative officers. President Jackson, through his Secretary of War, General Eaton, and his special commissioner, General Coffee, negotiated that treaty, and after seven years of correspondence between the officials of the Chickasaw Nation and the officials of the Choctaw Nation and the Government officers it was finally agreed that the Chickasaws should acquire by purchase, for a consideration of $500,000, an equal, undivided, individual interest in this common trust property upon the same terms that the Choctaws held it. What were these terms? That every person who was a member of the Choctaw community in 1830 or who was a descendant of any such person should have a vested, equal, undivided interest in the common trust property.

Mr. STEPHENS. Without any restrictions as to those who refused to move west of the Mississippi River?

Mr. BALLINGER. On the contrary, there was an express provision contained in article 14 of the treaty of 1830, under which treaty the

grant was made, that those who desired to remain east of the Mississippi River and did not remove to the western land should not forfeit or lose any of their interest in and to this property.

Mr. STEPHENS. Was that after the issue of the patent?

Mr. BALLINGER. No, sir; that is a provision of the very treaty under which the patent was issued.

Mr. STEPHENS. That recitation was not in the patent, but in the treaty?

Mr. BALLINGER. In the treaty, and the patent was to be issued by the President of the United States in strict conformity with the covenants of the treaty.

Mr. STEPHENS. There is not a statute based upon the treaty?

Mr. BALLINGER. No, sir; but, Mr. Chairman, if there had been a statute which attempted to exclude the legal beneficiaries under this grant it would have been null and void, because the title to this property passed from the Government of the United States absolutely and irrevocably by the patent, and it was beyond the power of the United States to recall it at any time thereafter. The title to this property having passed from the Government of the United States in fee simple, and therefore forever, the only power that the Government could possibly exercise over this property thereafter was to see that it was administered upon by the trustee in strict conformity with the terms and provisions of trust created by the treaty and the grant.

Now we come to the treaty of 1855. It was argued before the Senate committee last winter—and I would like to know whether it is still the contention of the Department—that this treaty changed the nature of the holding of this property by the two tribes.

Mr. WARD. Yes.

Mr. BALLINGER. Let me understand you. Do you contend that it changed the title or merely provided for the amount each title should receive?

Mr. WARD. No; not as between the tribes and the Government. It changed the ratio; it divided it one-quarter and three-quarters, but that does not enter into this at all.

Mr. BALLINGER. That is immaterial to this issue. The treaty of 1855 did not and could not disturb the title to this property nor defeat the vested rights of any individual who was of the designated class for whose benefit the trust was enacted.

Now, I submit that the title having passed from the Government absolutely and irrevocably in fee simple by the patent issued in 1842 that no person who was a beneficiary under that grant and who had a property right under that grant could be deprived of his property without due process of law. Mr. Chairman, it is elementary law that no administrative officer, agent, or commission can produce due process of law. Nothing short of a constitutional court—a court that passes upon the rights of all persons alike, that hears before it condemns, that proceeds upon inquiry and renders judgment only after trial—can render a decision, decree, or finding that is in its nature due process of law. Has any constitutional court, passing upon the rights of all the people alike in the eastern district of Oklahoma, ever passed upon the rights of these claimants? I am sure that no officer of the Department would have so little disregard for truth as to assert such to be the fact. In fact, Mr. Chairman, the people

whom I represent have never been heard by any tribunal, nor have they ever had their rights properly determined. Administrative officers in the secret recesses of the Departments and commissions have juggled with their claims, but these claims have never in fact been heard and determined.

NO TRIBAL LAW COULD IMPAIR VESTED RIGHTS OF CLAIMANTS.

Effort has been made in the past to sustain a novel contention with the tribal authorities, and they alone could say who the beneficiaries under this grant were. The constitution of the Choctaw and Chickasaw nations expressly prohibit the enactment of any law by the tribal legislators that is in conflict with the constitution, treaties, and laws of the United States. The constitution of the Choctaw Nation provides:

We, the representatives of the people inhabiting the Choctaw Nation * * * assembled in convention at the town of Doaksville, on Wednesday, the 11th day of January, 1860, in pursuance of an act of the general council, approved October 24, 1859, in order to secure to the citizens thereof the right of life, liberty, and property, do ordain and establish the following constitution and form of government, and do mutually agree with each other to form ourselves into a free and independent nation, not inconsistent with the Constitution, treaties, and laws of the United States, by the name of the Choctaw Nation. (See pp. 5 and 6, Choctaw Laws, 1894.)

By this constitution the Choctaw people expressly recognize the binding force and effect of the treaties with and the laws of the United States.

Under this provision of the Choctaw constitution no valid law could be enacted that was in conflict with any treaty of the United States. (Robb *v.* Burney, 168 U. S., 218.)

CHOCTAW AND CHICKASAW CORRUPT INDIAN ADMINISTRATION OF TRUST PROPERTY RESULTED IN THE UNITED STATES GOVERNMENT INTERFERING.

About the year 1890 representations were made to Congress that the conditions existing in the Choctaw and Chickasaw nations had become intolerable; that neither life nor property was secure under the laws of the tribes; that the officials of the tribes had become corrupt, and that practically the entire Indian estates were being held by a few influential and corrupt individuals to the exclusion of the great majority of the people, who were equally entitled to share in the property under the treaties and the grant.

On the 29th day of March, 1894, the Senate adopted a resolution authorizing the Committee on the Five Civilized Tribes of Indians, or any subcommittee thereof appointed by its chairman, to inquire into the conditions existing in the Choctaw and Chickasaw nations, and clothing said committee, or any subcommittee thereof appointed, with full power to visit the Territories, to take testimony, to require the attendance of witnesses, and to administer oaths.

A subcommittee was appointed, consisting of Senators Teller, Platt, and Roach. Two of the members of this committee were admittedly the best posted men upon Indian matters in the Senate. I refer to Senators Teller and Platt. Both were men of the highest integrity and possessed of great familiarity with Indian affairs by reason of their long and continuous service on the Senate committee, and both were admittedly great lawyers.

In referring to the conditions existing in the Choctaw and Chickasaw nations the committee reported:

But in addition to this 50,055 Indians—

That was the census enumeration of 1890, showing the number of Indians in Indian Territory—

In addition to this 50,055 Indians there are large numbers of claimants to Indian citizenship who may or may not be Indians within the provisions of our treaties.

This committee does not say anything about the provisions of the Choctaw and Chickasaw laws, but, "within the provisions of our treaties," the one basic instrument that must govern and control the adjudication of rights in and to this property.

These are put down as 18,636, and includes the colored people whose rights of Indian citizenship are admitted as well as a large number who are not recognized by the Indian authorities as entitled to the rights of Indian citizenship, but who claim to be legally Indian citizens.

In referring to the title held by the Choctaw Nation the committee said:

The theory of the Government was when it made title to the lands in the Indian Territory to the Indian tribes as bodies politic that the title was held for all of the Indians of such tribe. All were to be equal participators in the benefits to be derived from such holding. But we find in practice such is not the case. A few enterprising citizens of the tribe—frequently not Indians by blood, but by intermarriage—have, in fact, become the practical owners of the best and greatest part of these lands, while the title still remains in the tribe, theoretically, for all; yet, in fact, the great body of the tribe derives no more benefit from their title than the neighbors in Kansas, Arkansas, or Missouri.

According to Indian law (doubtless the work of the most of the enterprising class we have named) an Indian citizen may appropriate any of the unoccupied public domain that he chooses to cultivate. In practice he does not cultivate it, but secures a white man to do so, who takes the land on lease of the Indian for one or more years, according to the provision of the law of the tribe where taken. The white man breaks the ground, fences it, builds on it, and occupies it as a tenant of the Indian, and pays rental either in part of the crop or in cash, as he may agree with his landlord.

Instances came to our notice of Indians who had as high as 100 tenants, and we heard of one case where it was said the Indian citizen, a citizen by marriage, had 400 holdings, amounting to about 20,000 acres of farm land.

Mr. STEPHENS. Was that Bill Washington?

Mr. LEE. It must have been.

We believe that may be an exceptional case, but that individual Indians have large numbers of tenants on land not subdued and put into cultivation by the Indian, but by his white tenant, and that these holdings are not for the benefit of the whole people, but of the few enterprising ones, is admitted by all. The monopoly is so great that in the most wealthy and progressive tribe your committee were told that 100 persons had appropriated fully one-half of the best land.

That refers to the Choctaw tribe.

This class of citizens take the very best agricultural lands and leave the poorer land to the less enterprising citizens, who in many instances farm only a few acres in the districts farthest removed from the railroads and the civilized centers.

As we have said, the title to these lands is held by the tribe in trust for the people. We have shown that this trust is not being properly executed, nor will it be if left to the Indians, and the question arises, What is the duty of the Government of the United States with reference to this trust? While we have recognized these tribes as dependent nations, the Government has likewise recognized its guardianship over the Indians and its obligations to protect them in their property and personal rights.

If the tribe fails to administer its trust properly by securing to all the people of the tribe equitable participation in the common property of the tribe, there appears to be no redress for the Indian so deprived of his rights, unless the Government does interfere to administer such trust.

Is it possible because the Government has lodged the title in the tribe in trust that it is without power to compel the execution of the trust in accordance with the plain provisions of the treaty concerning such trust?

Whatever power Congress possessed over the Indians as semidependent nations, or as persons within its jurisdiction, it still possesses, notwithstanding the several treaties may have stipulated that the Government would not exercise such power, and therefore Congress may deal with this question as if there had been no legislation save that which provided for the execution of the patent to the tribes.

Now, Mr. Chairman, what has the court said must be the basis for the distribution of such an estate? These questions are not new, undetermined, and unadjudicated questions, outside of the Interior Department. That is the only place they are not understood. The Court of Claims in the case of the New York Indians *v.* The United States (40 Court of Claims, pp. 556, 557), which decision was affirmed by the Supreme Court of the United States, and in which judgment was rendered in conformity with the mandate of the Supreme Court of the United States, said, in a similar controversy:

Consequently, the court must adopt a rule of descent or participation which would embrace all persons whom it was the policy of the United States to remove, and this rule being ex necessitate rei, once established must continue.

Mr. STEPHENS. Where is that decision to be found?

Mr. LEE. This is found in 40 Court of Claims, pages 556 and 557. Judgment was rendered in conformity with the decision of the Supreme Court, and upon this judgment rendered in that case an appeal was taken to the Supreme Court of the United States, and the Supreme Court dismissed it because it said this judgment was in conformity with its decree.

The court proceeds:

A court can not have one rule for one period of time and another for another period of time. The white wife and her children born between 1828 and 1860 were as much Indians within the intent of the treaty as any full-blooded Indian in the Six Nations, and what was the rule during that period of time must continue to be the rule up to the time of the judgment or the satisfaction of it; that is to say, the children of white mothers and Indian fathers affiliated with the tribes must be reckoned as Indians. The court must look upon the community and its members as such, and can not turn aside into the genealogy of individuals or be turned aside by the peculiarities of Indian laws and customs. This is not a question of Indian citizenship, or tribal custom, or communal ownership in Indian property, but simply a question of a contract and of the intent of those who entered into it.

Mr. Chairman, there was a case where the Interior Department undertook to carry out an Indian law and an Indian custom enacted in violation of a treaty with the Government, the same as they have attempted to carry out an Indian law and an Indian custom in administering upon this estate. The Department undertook to follow the Indian law that provided in effect that if an Indian man married a white woman his children should not be beneficiaries in the Indian estate, but that the Indian mother's blood alone should control, and the court said that it was fallacious; that such a holding could not stand in a court of equity.

Again, Mr. Chairman, at the time this grant was made the Choctaws were not full bloods. They were possessed of an admixture of the white and black races.

What has been the rule of construction in the determination of rights under a grant where such conditions existed. Mr. Justice Shiras tells you what the law is, and the established and uniform

rule, and if the Department had adhered to his decision in the adjudication of these questions we would not now be here bothering you gentlemen to-day. Mr. Justice Shiras says in the case of Sloan *v.* United States (95 Fed., 197), which suit was brought under this very law that we want extended to these people:

> It confers the right to an allotment upon Indians of the Omaha tribe. It makes no discrimination with respect to the mixed bloods. It must have been well known to Congress, as it unquestionably was to the Omaha tribe, that there was residing at that time upon this reservation as members of the tribe many persons of mixed blood, and if it was the purpose of the parties to exclude from the benefit of the act all persons who were not Indians of pure blood, apt words to that end would have been used.

What was the condition existing at the date of the ratification of the treaty of 1830? Was the Choctaw community composed only of full-blood Indians, or was the community composed then, as it is now, of a mixture of the white and black races?

These questions are removed from the domain of controversy by reference to volume 7 of the American State Papers (public lands). That volume contains a list of those members of the Choctaw community of Indians who selected reserves of land in Mississippi under the treaty of 1830, and was compiled in September, 1831, less than a year after the treaty was made. On page 77 appear the names of persons of mixed Indian and negro blood under the heading, "Names of Indians owning farms." In this list are the names of Sally Tom, with the notation "a free woman;" Joshua O'Rare, with the notation "a mulatto, married Sally Tom's daughter, and lives with Sally Tom;" William Lightfoot, "a mulatto, half Indian and half negro;" Jim Tom, "half-breed negro; has an Indian wife;" James Blue, "a negro man; had an Indian wife; lives below the factory."

Many other references are made therein to persons of mixed Indian blood. Indeed, in the year 1831, when this list was compiled by the Indian chiefs and approved by Government officers, a large percentage of the persons comprising the Choctaw community of Indians were either of mixed Indian and white or Indian and negro blood, and in many instances, as appears from the schedule, recognized members of the Choctaw community were not possessed of any Indian blood, being wholly of negro or white blood. The one and only essential requisite to full membership in the community of those affiliated with the Choctaw tribe was that he or she be a free person. Thus to-day the only essential requisite to participate in the tribal property of the Choctaws is descent from a person who was a member of the Choctaw community in 1830. The question of slavery having been eliminated, it is no longer a question for consideration.

The word "descendants" was advisedly used in the treaty, for at the date of its ratification the Choctaw people were living in a state of nature. The marital ties existing among them were not regarded with the same solemnity that they are in civilized communities to-day, illicit intercourse, as we now understand it, being a common practice, men and women marrying and unmarrying at pleasure under the crude customs of the Choctaws. The mere living together of a man and a woman constituted a valid marriage, and the abandonment of the woman by the man constituted a valid divorce; but the ties

of consanguinity were strictly acknowledged; children became possessed of all their natural rights, and family tradition traced them to their remotest lengths. See Wall *v.* Williamson (11 Ala., 828); Johnson *v.* Johnson's admr. (9 Mo. Rep., p. 88); Robinson's History of America, book 4.

The very records which you, Mr. Ward, have in your office show that in the year 1831, when this list was compiled by the Indian chiefs and approved by the Government officers, a large percentage of the persons composing the Choctaw community of Indians were either mixed Indian and white or Indian and negro blood, and in many instances, it appears from the schedule, recognized members of the Choctaw community, were not possessed of any Indian blood at all. These questions are beyond the domain of controversy and dispute.

Now, Mr. Chairman, I shall proceed to the act of 1898 under which these people were enrolled. First, we have the acts of 1896 and 1897. There were very few people that made any applications or asserted any rights under either one of those acts, but in 1898 the Commission advised the Department—no, advised Congress, for it made its report to Congress, and thereby advised the Department indirectly—that under the previous laws requiring the submission of an application it could not secure a list of the persons who were entitled to share in this trust property. Thereupon, in 1898, Congress enacted a law, and the report on the bill drawn by Mr. Curtis, who was formerly a member of this committee, contains these words:

> Provision has heretofore been made for the making of rolls of citizenship of the various tribes, but the Commission authorized to do the work is of the opinion that to do equal justice to all concerned they should have additional authority, and we believe this measure provides for the settlement of the question of citizenship, so that when the rolls are made the interest of all concerned will have been fully protected and this vexed and important question will be settled forever.

Mr. Chairman, when Congress commenced to enact legislation for the distribution of this property it made a mistake. Instead of providing that the legal beneficiaries under the trust should be enrolled, it provided that the citizens of the nation should be enrolled. Now, citizenship in the nation is a political question that Congress can control, but the distribution of property under a trust is something that Congress can not control to the injury of any person. The Constitution of our country throws a protection around every scrap of property that a man may own, and Congress or no other power in this country, thank God, can take the property of a citizen of these United States or of any person in our land except by due process of law.

Now, the act of 1898, with which members of this committee are familiar, directed the Commission to do what? And this was the first instruction given the Commission, "That in making the rolls of citizenship of the several tribes as required by law"—and what was the law?

The treaty under which this grant was made, "to them and their descendants."

"Said Commission is authorized and directed to make correct rolls of the citizens by blood." That meant any person who was of Indian blood if it meant anything in the world. Yet neither the

Indian Office nor the Commission to the Five Civilized Tribes gave it that construction—

Make correct rolls of the citizens by blood of all the other tribes, eliminating from the tribal rolls such names as may have been placed thereon by fraud or without authority of law, enrolling such only as may have lawful right thereto, and their descendants born since such rolls were made.

Now, Mr. Chairman, that act directed the enrollment of every person who was of Indian blood. The Department could not legally confer property rights on persons of mixed Indian and white blood and exclude persons of mixed Indian and negro blood, as it has attempted to do. It directed the enrollment of persons of Indian blood, and it did not authorize the Department to go back and consider the question of the legitimacy of the children. Indian blood was the test, and the treaty provided that the conveyance should be made to the Choctaw Nation for the exclusive use and benefit of those persons who comprised the Choctaw community of Indians in 1830 and their descendants. Who ever heard of the word "descendants" being construed to mean only children born of a ceremonial marriage among Indians? Any child, whether the result of a lawful marriage or not, is as much a descendant within the meaning of the provisions of the treaty as the child born in lawful wedlock, but that was not the holding of the Department.

Mr. Chairman, there was one provision of that enactment that was absolutely null and void. It was beyond the power of Congress to impose. And that was the provision that provides "that no person should be enrolled who has not heretofore removed to and in good faith settled in the nation in which he claims citizenship." That was not one of the conditions upon which the grant was made, but by the terms of the treaty it was expressly provided that he need not remove, and that being one of the terms and provisions of the treaty, it could not be changed seventy-five years afterwards by an act of Congress, because you can not legislate my property away from me because I have not lived on my land.

Then, Mr. Chairman, again, such an enactment as that was in violation of the established rules of the Government as laid down in the laws of this country, for Congress had by repeated enactment been endeavoring in every way it could to induce the Indians to abandon their tribal relations and become citizens of the United States, and in every enactment it was expressly provided that the Indian who did thus abandon his tribe should not lose any of his tribal rights by reason thereof. That provision was put in the act of 1898, Mr. Chairman, at the suggestion and advice of one of these same gentlemen who had been holding practically the entire estate to the exclusion of hundreds of others equally entitled to it, but Congress was not aware, probably, when that enactment was made—I will say that no member of this committee was aware at that time; if he was, his advice was not adhered to—that such a condition as that was not one of the conditions of the grant.

Now, then, the Commission and the Department, when they came to adjudicate these cases, held that under the law—and I did not read all of it—but the act of 1898 directed that Commission to go out in the brush, to bring these people in before it, to examine them, and

gave the Commission all the power of a court; it gave it the power to punish for contempt; it provided that any false statement made before the Commission should be punished as if that false statement had been made in a court; it gave it all the machinery necessary to make full and complete rolls, and then provided in the last clause that when the rolls were so made as provided by this law they shall be final.

Now, the Department held that, notwithstanding the positive provisions of the law and the instructions of the Assistant Attorney-General to the contrary, that unless an applicant appearing before the Commission submitted an application for enrollment as a citizen by blood he could not be so enrolled regardless of the quantum of his Indian blood or his rights under the treaties. The Assistant Attorney-General in instructions to the Commission for its guidance in the preparation of these rolls directed the Commission as follows:

> The act of 1897 did not provide for new applications for citizenship, neither did the act of 1898 make any provision for new applications for citizenship.

The Department, however, held, four years after these people were before the Commission, that unless they made an application for enrollment as a citizen by blood before the Commission, under a law which did not require it, they could not be so enrolled.

If that holding had been uniform the Department would have excluded from enrollment every person who appeared before the Commission under the act of 1898, and practically every person whose name appears upon the final approved rolls appeared before the Commission under the act of 1898. But the holding of the Department was not uniform. It was partial, special, and arbitrary. It was sufficiently elastic to take in such persons as the Government officers saw fit to enroll and to exclude from enrollment all persons who had incurred the ill-will of these Government officers. Not only were the holdings of the Department in utter disregard of law, an arbitrary exercise of power, an unjust imposition upon these people, but every other act of the Department and the Commission, excepting only the holdings of the Assistant Attorney-General's office, were equally arbitrary, special, and partial.

Commissioner of Indian Affairs Jones also issued instructions to the Commission for its guidance in the preparation of these tribal rolls.

He instructed the Commission as follows:

> The rolls as made up by your Commission must, to become final, receive the approval of the Secretary of the Interior. It will therefore be necessary for you to make a record in all cases sufficient to enable this office and the Department to take intelligent action in the premises, and especially in those cases where your decision, either for or against the right of any person to have his name appear on the roll, is complained of.
>
> For the purpose of this record you will require each applicant for enrollment to present himself in person before the Commission at one of its appointments within the tribe in which such applicant claims right to enrollment, for examination under oath, his statements to be taken down by the Commission, upon which the Commission will examine his right to enrollment, and such record of action by the Commission will be preserved and transmitted with the rolls to be considered by this office and the Department when the rolls made by the Commission are submitted for the approval of the Secretary of the Interior.

Did the Commission make a single record? Did they examine a single person in conformity with these instructions? Tams Bixby, chairman of the Commission to the Five Civilized Tribes, and who

supervised the examination and enrollment of persons under this act of June 28, 1898, appeared before the select committee of the Senate sitting at Muskogee on the night of November 16, 1906, and under oath testified as follows:

Q. Were you in the field when applicants were examined and identified under the act of 1898?

Commissioner BIXBY. I was in the Chickasaw Nation in the fall of 1898.

Q. Were you in charge of the examination and identification of either the citizens by blood, freedmen, or intermarried?

Commissioner BIXBY. I presided in the tent at which the applicants who claimed enrollment by reason of Chickasaw blood or Choctaw blood presented themselves.

Q. Was everything that was said by the applicant at the time he or she appeared before you for enrollment entered upon the examination record, such as that [exhibiting paper to the witness]?

Commissioner BIXBY. No, sir; not at all.

Q. Such portions of their statements as you deemed proper to place upon it?

Commissioner BIXBY. We did not take any testimony in our tent at all. (S. Rept. No. 5013, pt. 1, 59th Cong., 2d sess., pp. 498–500.)

A. S. McKennon, who was a member of the Commission in 1898 and 1899, appeared before the select committee of the Senate sitting at South McAlester in November, 1906, and under oath testified that he had charge of the work of the enrollment of persons of mixed Choctaw or Chickasaw Indian and negro blood. When asked by a member of the committee whether this class of persons were enrolled as freedmen Commissioner McKennon replied:

Yes, sir; I simply addressed myself to the task of determining whether they or their ancestors were slaves of the Chickasaws; if so, I enrolled them; if not, they were not entitled. (S. Rept. No. 5013, pt. 1, 59th Cong., 2d sess., pp. 946–947.)

Think of it, Mr. Chairman. It is a disgrace. A person of seven-eighths Indian blood and one-eighth negro blood appearing before that man for examination under a law which directed him to examine him as to his Indian blood, and the Department having instructed that officer of the Government to examine him as to his Indian blood, examining him solely as to his descent from a person once held in involuntary servitude. That was the uniform policy of that Commission. That is the reason I say that every act of the Commission, every act of the Department, was in violation of law and in ruthless disregard of the rights of persons who are put under the care of these officers, which officers took a solemn oath to uphold the law and thereby protect and care for these people. Mr. Chairman, it would have been infinitely better in the beginning of this controversy for Congress to have declared by act a confiscation of this property and turned it over to these administrative officers to loot and pillage at will.

Mr. Chairman, I have the affidavits here of men who worked with these commissioners, and who state under oath that they were instructed by the Commission not to make any record of the Indian blood of any person of mixed Indian and negro blood. Charles Cohee is one of them——

Mr. STEPHENS. Are the affidavits sworn to?

Mr. BALLINGER. Sworn to; all of them. Charles Cohee was selected by the governor of the Chickasaw Nation to work with this Commission. Another affidavit is that of W. L. Bennett, who was also an employee of the Commission. Another affidavit of Thomas

Norman, one of the most gentlemanly, honorable attorneys in the entire Choctaw or Chickasaw nations, or to be found anywhere within the limits of our several States, who sets out under oath the arbitrary action of the Commission.

But, Mr. Chairman, not only did they refuse to enroll these people as Indians, but when these people wrote to the Commission, addressing communications to the Commission in writing, and insisting upon their enrollment as Indians, the Commission returned those applications to them and refused to accept them, but informed them that if they would make an application for enrollment as freedmen they would enroll them accordingly.

Here is a copy of a letter from the Commission, certified copy of the original of which I have in my possession:

DEPARTMENT OF THE INTERIOR,
COMMISSION TO THE FIVE CIVILIZED TRIBES,
Muskogee, Ind. T., March 16, 1901.

PRINCE BUTLER, *Grant, Ind. T.*

DEAR SIR: Receipt is hereby acknowledged of the application for enrollment as a citizen of the Choctaw Nation of George Butler, the infant son of Prince and Mary Butler, born April 3, 1900.

The application is again returned for the reason as stated in the Commission's letter of the 23d of February. The mother of the child appears upon our records as listed for enrollment as a Chickasaw freedman. There is inclosed you herewith a new blank application which you will have made out in conformity with the corrections made in lead pencil upon the application returned to you herewith.

Upon return of the new application in proper form for the enrollment of the child as a freedman the matter will be given further consideration.

Yours, truly,

_____,
Acting Chairman.

Mr. Chairman, in the history of the world, under the most autocratic form of government, such a transaction as this never before occurred. Yet it is proposed by the Department to make these rolls, stamped upon their face with inaccuracy, gross mistake and fraud, final and conclusive as to the rights of these American citizens.

I want to refer to one other thing, and that is all shown in these official records, and if anyone wants the proof it is here under oath. The Commission permitted an employee, the secretary of that Commission, who had direct charge of the enrollment of every person of Choctaw or Chickasaw Indian blood, in the month of June, 1903, to accept a position in the office of Mansfield, McMurray & Cornish, a firm of attorneys employed to defeat the rights of these and other claimants, and who received as compensation for their work a consideration based upon each claim that was defeated. That man while actually in the employ of the Government, went into the office of Mansfield, McMurray & Cornish, and there spent a month in the year 1903 briefing and preparing cases against applicants, and in the following month he returned to the Commission and in the name of the Government of the United States, he passed upon, adjudicated, and determined the rights of the poor devils that he had briefed the cases against while in the office of Mansfield, McMurray & Cornish.

Mr. STEPHENS. What is the name of that man?

Mr. BALLINGER. William O. Bell.

Mr. STEPHENS. Where is he now?

Mr. BALLINGER. He was discharged as the result of charges that I personally preferred against him after they were fully investigated.

Mr. STEPHENS. Where can he be found now?

Mr. BALLINGER. He is at Muskogee, connected with Tams Bixby's newspaper, the Muskogee Phoenix; he is the general manager.

Mr. Chairman, when he returned to that Commission, not only did he perpetrate the outrages that I have just described, but he went further than that. He suppressed applications in cases where applications had actually been made in writing, which applications the Department held were essential to the enrollment of the claimants. He not only did that, but he directed the law clerks, although not a lawyer, as he himself testified, not having been admitted to any bar nor having read a line of Blackstone or any other work to be found inside of two covers on law—he instructed law clerks how to write legal opinions denying to claimants their property rights. He not only did that, but he was promoted for that meritorious service by the Commission to the position of secretary to the Commission, and after he became secretary to the Commission he issued orders that no Choctaw or Chickasaw case should be transmitted to the Department until it came into his hands and he examined it and passed upon it.

Now, I make the positive statement of fact, as shown in these records, that he adjudicated cases, as he says, under bills pending in Congress, which possibly some of you gentlemen may have introduced, but which were not laws and never became laws, and he determined the rights of these people under those bills pending in Congress. This is the kind of work the Department says should stand, which if it were in a court of law, Mr. Chairman, would not stand three seconds. The men who are guilty of these outrages, Mr. Chairman, should stand behind the bars wearing the stripes of a convict. These outrages are a shame upon the fair name of our country. They are a disgrace to the Department under which these men were employed.

I want to advert here to that now famous legislative tribunal known as the Choctaw-Chickasaw citizenship court. That court, Mr. Chairman, it is charged and generally believed by every human being that ever came in contact with the members of it, was bribed and received as a consideration for their decisions in the cases of some of these claimants a part of the fee paid to Mansfield, McMurray & Cornish for robbing and despoiling these people of their rights. The evidence of their bribery has been in the possession of the Secretary of the Interior for the past ninety days—contained in the statement of a man who was in the office of Mansfield, McMurray & Cornish, who knew of his own personal knowledge, who saw with his own eyes the bribery of these men, the passing to them of money daily, the division of the fees among them, the distribution of that fee of $750,000; who told the Secretary when, where, and how the money was disbursed, through what banks checks passed; and yet Mr. Chairman, no effort has been made on the part of the Department to bring these scoundrels before the bar of justice. The secret service, used particularly for investigating Members of Congress and hounding them, has been kept off these cases and the Department has refused thus far to investigate these crimes. Mr. Chairman, everything that has been done in the Choctaw and Chickasaw nations in connection with these estates is reeking and saturated with fraud.

Mr. STEPHENS. I would like to inquire the amount of that fee and how it was paid.

Mr. BALLINGER. Mr. Chairman, that fee of $750,000 was paid this firm of attorneys for services before a legislative commission, not a court, and the duty of that legislative commission was, first, to determine two questions of law which had previously been passed upon by a United States district court and affirmed by the Supreme Court of the United States. But Congress, in its wisdom, directed this commission to redetermine questions of law which the Supreme Court had already determined, and provided that its determination should be final and conclusive, upon the rights of these parties. That commission found instantly that the district courts and the Supreme Court of the United States had erred upon the two questions of law.

Mr. STEPHENS. Where is that decision of the United States Supreme Court to be found?

Mr. BALLINGER. It is to be found in Stevens *v.* Cherokee Nation (174 U. S., 488; 43 L. Ed., 1056).

This legislative commission not only found those judgments to have been entered contrary to law, but that decision operated to render null and void every decision of every court in that country upon questions involving the rights of all these people.

Mr. STEPHENS. About how many claimants were affected by that decision?

Mr. BALLINGER. Five thousand people were, by the decision of that legislative court, deprived of their rights. And then the law provided that those who desired to take an appeal to this citizenship court could do so—their case to be tried de novo.

Mr. STEPHENS. What did the fee amount to in each one of these cases, in that particular case of $750,000; I mean in each individual case?

Mr. BALLINGER. I don't remember the exact basis. The contract was based on 9 per cent, but the court did not allow that. The court allowed 7 per cent.

Mr. WARD. Three and one-half per cent.

Mr. BALLINGER. No; it is set out in the decree as 7 per cent. They valued the tribal right at $5,000 per head, and they estimated that as about 4,000 claimants had been deprived of their property the attorneys had saved the nations about $20,000,000 and accordingly allowed them a fee of $750,000.

The CHAIRMAN. As I understand it, the firm of Mansfield, McMurray & Cornish were the attorneys for the Choctaws and Chickasaws?

Mr. BALLINGER. The Choctaw and Chickasaw nations.

The CHAIRMAN. Their duty in connection with this particular contract which resulted in this $750,000 fee, as I understand from you, was to appear and prevent persons from being enrolled.

Mr. BALLINGER. Their duty under this contract, and I may add they were operating under several contracts, all approved by the Department, was to secure a readjudication of all cases of a certain class that had been previously adjudicated by the United States district courts, affirmed by the Supreme Court of the United States. That was the object of the legislation and the subject of their contract.

Mr. CHAIRMAN. Was the ultimate result to keep persons from being enrolled regardless of the merit of their claim?

Mr. BALLINGER. Yes; certainly. The contract with these attorneys was one of the most iniquitous schemes that could have been devised by the devil himself. It was a straight proposition to defeat claimants, regardless of the merits of their claims at so much per head, the fee to be based upon the value of the per capita tribal property. In other words, if these attorneys succeeded in defeating a claimant, whether he was legally entitled to his rights or not, they received compensation. If they did not knock him off the roll, they received no compensation whatever in that case.

Mr. STEPHENS. It was a contingent fee?

Mr. BALLINGER. Yes, sir; purely a contingent fee.

Mr. STEPHENS. Did not these same attorneys receive at the same time salary of $5,000, $10,000, or $15,000 a year as attorneys' fee from these nations?

Mr. BALLINGER. These attorneys were then operating under several contracts, one of which provided that they should receive $15,000 per annum and the expenses for their work before the Dawes Commission. They have received in the past ten years from the tribal governments, illegally and fraudulently, upward of $6,000,000, and they have received altogether from the tribal governments and the Government of the United States in the past ten years upward of $1,350,000, a very liberal compensation for three country attorneys, none of whom had ever tried a case in an appellate court, as I am advised, before their employment in these cases. But the infamous portion of these contracts was that the Government took the funds of these claimants whose rights had been denied and paid the money of these claimants to these attorneys to defeat their rights. In other words, the Government used the money of these people to defeat their rights and subjected them to the necessity of mortgaging their houses, wagons, farming utensils, and everything else in the world they possessed to defray the actual expenses of defending their rights against the avarice and greed of Federal officers who had been employed to protect them and to see that they secured their property.

For ten years these claimants were not only compelled to contest with these attorneys for the nations who were receiving hundreds of thousands of dollars per annum to defeat their rights by bribery of Federal officers, courts, and everything else that was purchasable, but they were compelled to contest their rights with the administrative officers who sat as judges in their cases, but who were in reality nothing short of attorneys for the nations and who used all their power to defeat the rights of claimants.

Mr. STEPHENS. Did some of these people own houses and farms and property?

Mr. BALLINGER. Why, Mr. Chairman, when a part of these people were enrolled by judgments of the United States courts and these judgments were affirmed by the Supreme Court of the United States they supposed that settled their rights and they then proceeded to make large expenditures in improving their allotments. Some of these people have spent as high as ten or fifteen thousand dollars, every cent they had in the world, in improving their allotments.

Four years after the decision of the Supreme Court was rendered came the decision of this citizenship court, the members of which it is alleged and universally believed were bribed, which citizenship court, through the influence of Mansfield, McMurray & Cornish, and induced by corrupt motives, rendered decisions denying to all these claimants their property.

That infamous citizenship court, and I use that term advisedly, denied the rights of children of the signers of the treaty of 1830, under which this grant was made—the grant being made exclusively for the use and benefit of the persons who comprised the Choctaw community in 1830 and their descendants. I have before me the correspondence of the Department with John T. Williams, a resident of Swink, Choctaw Nation, and a son of Ambrose Williams, who was one of the representatives of the Choctaw Nation who negotiated the treaty of 1830 and whose name appears thereon as one of the signers of that treaty and under which treaty this grant was made. The following is a verbatim copy of the departmental letter:

DEPARTMENT OF THE INTERIOR,
OFFICE OF INDIAN AFFAIRS,
Washington, May 4, 1907.

JOHN T. WILLIAMS, Esq.,
Swink, Ind. T.

SIR: The Office is in receipt of three letters written by you, one addressed to the Attorney-General of the United States, one to the Department of the Interior, and one to this Office, relative to your enrollment as a citizen of the Choctaw Nation and saying that you are going to have your rights as a citizen before you quit, and that you are going to appeal to the Supreme Court of the United States.

In reply, the Office can only repeat what it has told you heretofore, that it has no jurisdiction to consider any citizenship matter since the 4th of March, 1907, and that there is now no authority of law for placing the name of any person on any of the rolls of the Five Civilized Tribes in the Indian Territory.

There was no question in your case as to your Indian blood, and it was not denied by the Commissioner to the Five Civilized Tribes that you were a person of Indian blood. However, the possession of Indian blood was not enough under the law to justify your enrollment as a citizen of the Choctaw Nation. There are many persons of Indian blood who are not entitled to enrollment as citizens of the Five Civilized Tribes in the Indian Territory.

The Office has no reason to object to your appeal to the Supreme Court of the United States, if you so desire.

Very respectfully,

C. F. LABRABEE,
Acting Commissioner.

Under the grant what additional qualification could have been required of a person than that he was either a member of the Choctaw community as it existed in 1830 or was a descendant of such member? But the Indian Office and the Department of the Interior and the Commission to the Five Civilized Tribes found additional qualifications necessary, not qualifications authorized by law, but qualifications which they arbitrarily exacted. The applicant was not notified that additional qualifications were necessary, or that additional proof would be required or was necessary to perfect his claim, but in these secret recesses of the Department his claim was denied, without notice to him, and these administrative officers attempted thereby to divest him of his property rights—a crime I submit for which these administrative officers should have been punished severely.

(Thereupon the committee adjourned.)

MONDAY, *March 2, 1908.*

The subcommittee met this day at 10:45 o'clock, Hon. Bird S. McGuire (chairman) presiding.

There appeared before the subcommittee Mr. Webster Ballinger, attorney at law, Washington, D. C., in behalf of the bill, and Mr. George A. Ward, chief of division of Indian Territory, Office of Indian Affairs, in opposition thereto.

STATEMENT OF MR. WEBSTER BALLINGER, OF WASHINGTON, D. C.—Continued.

Mr. BALLINGER. Mr. Chairman and gentlemen of the committee, if you will permit me to have printed as a part of my remarks certain matters which I have typewritten, I will endeavor to confine my remarks merely to a statement of fact, unless the committee desires to hear me more fully. I have some important documents, such as a copy of the original contract between Mansfield, McMurray & Cornish and the Choctaw and Chickasaw nations, the judgment of the Choctaw-Chickasaw citizenship court, allowing them a fee of $750,000, as well as other documents which have a strong bearing upon the questions at issue.

Mr. MCGUIRE. You may proceed, Mr. Ballinger, for twenty minutes, and then we will see what the outlook is for time. Proceed as briefly as you can, and at the same time with sufficient fullness to satisfy yourself.

Mr. BALLINGER. Mr. Chairman and gentlemen of the committee, at the close of my remarks the other day I was referring to the contract entered into with Mansfield, McMurray & Cornish with reference to certain claims to citizenship in the Choctaw and Chickasaw nations. I stated then that the contract provided that the attorneys should receive 9 per cent of the value of the property which claimants should receive in the event the judgments rendered by the United States district court remained intact. I also stated that those judgments had been affirmed by the Supreme Court of the United States in the case of Stephens against the Cherokee Nation, 174 United States. I will not read the contract, but merely portions of it, and I ask leave to include the entire contract in my remarks. The second article of this contract declares that [reads]—

Whereas many persons who are not Choctaw or Chickasaw Indians have fraudulently procured judgments of the United States courts in the Indian Territory, declaring them to be members of said tribes and entitled to allotments of tribal lands and property, and thereby the nations will lose several million of dollars in land and tribal property unless immediately and vigorous steps be taken to defeat the claims of said persons, jointly by the Choctaw and Chickasaw nations: Therefore,

Et cetera.

Now, the sixth provision of that contract, with reference to the compensation of these attorneys, provided as follows [reads]:

Sixth. That the compensation of the said Mansfield, McMurray & Cornish, parties of the second part, under this contract——

Mr. MCGUIRE. Just a moment, Mr. Ballinger. That starts out with a recitation to the effect that through the United States courts they have obtained judgments establishing the fact that they are of Indian blood?

Mr. BALLINGER. Yes, sir.

Mr. MCGUIRE. Do you know how that could have been done? How was it done?

Mr. BALLINGER. Mr. Chairman, under the act of 1896 Congress provided that any person feeling aggrieved at the decision of the Commission to the Five Civilized Tribes might appeal to the United States district court, whose judgments should be final. More than 4,000 people, I believe more than 5,000 people, appealed from the judgment of the Commission to the Five Civilized Tribes to the United States district courts. They went into open court with notice to the world and, with the attorneys of the Choctaw and Chickasaw nations present, proved their cases by competent evidence and secured judgments of those courts entitling them to enrollment. After the rendition of those judgments it was contended by the attorneys for the nations that those judgments were not constitutional. A number of test cases were taken to the Supreme Court of the United States under the act of June 28, 1898. They were consolidated into one case, known as the case of Stephens *v.* The Cherokee Nation, reported in 174 United States; and the Supreme Court of the United States held the legislation and the judgments to be constitutional and valid.

Mr. MCGUIRE. Do you know how many of them there were?

Mr. BALLINGER. In this class of cases there were over 4,000 persons. That is set out in this decree.

Mr. MCGUIRE. Were any of these persons who had received such judgments from the Federal courts eliminated from the record of the Dawes Commission?

Mr. STEPHENS. Every one of them.

Mr. BALLINGER. Every one of them had been denied by the Dawes Commission and were denied until the United States district courts rendered judgments in their favor.

Mr. MCGUIRE. Then they were put on?

Mr. BALLINGER. Yes; under provisions of a law that provided that if the United States courts rendered judgments in their favor, they should then be enrolled.

Now, Mr. Chairman, those judgments stood for four years, and in some cases longer than that. Those people secured allotments of land, went upon their land, and made valuable improvements thereon. Four or five years after those judgments had been affirmed by the Supreme Court of the United States this citizenship court was created, and you will observe that in the very first statement or paragraph of this contract it is boldy asserted that the judgments obtained were fraudulent. It is asserted, as a matter of fact, that they were fraudulent, without one scintilla of evidence to show any fraud that entered into any one of those cases.

Now, what is the nature of this contract with reference to the payment of the attorneys? I submit it was the most infamous contract that was ever entered into by any set of men. This sixth provision provides that—

The compensation of the said Mansfield, McMurray & Cornish, parties of the second part, under this contract, shall be 9 per cent of the value of the shares of tribal property which such of said so-called "court claimants," as hereinafter defined, as may be refused allotment or distribution of tribal property would have received in the event of allotment or distribution thereof to them, whether for past or future services to this end; and that, for the purposes of this contract it is agreed that the share of tribal property a "court

claimant" would receive, in the event of allotment and distribution thereof to him, is of the value of $4,800, and is hereby so fixed; and the term "court claimant," as herein used, shall include all persons whose names were embraced in what purported to be judgment of the United States courts in Indian Territory, admitting them to Choctaw and Chickasaw citizenship, under the said act of Congress approved June 10, 1896; and all persons who have been born to or become intermarried with them, and who are claiming rights thereby,

Et cetera.

Under that contract there was a premium of $432 offered to these attorneys for every person whose rights to enrollment could be defeated who had previously been enrolled by judgment of the United States district courts, said judgments having been obtained in open court, with notice to the world, and with all the opposition that the Choctaw and Chickasaw nations could concentrate at the hearings.

Mr. STEPHENS. Had these same attorneys been representing the nations at the time of the trial of these cases before these Federal courts?

Mr. BALLINGER. No; I think not.

Mr. STEPHENS. They had been represented by other attorneys?

Mr. BALLINGER. Yes. They had been represented by W. B. Johnson and Judge Stewart, of South McAlester, two of the most able and honorable attorneys to be found in that or any part of this country.

Mr. STEPHENS. Had there been any appeal to a higher court?

Mr. BALLINGER. Under the act of 1896 the judgments of the United States district courts became final.

Mr. STEPHENS. How did they get the Stephens case, the one you mentioned, before the Supreme Court?

Mr. BALLINGER. That was authorized by act of Congress and was appealed on the question of the constitutionality of the legislation authorizing the appeal from the Commission to the Five Civilized Tribes to the United States district courts.

Mr. STEPHENS. I see.

Mr. BALLINGER. Now, the court, the Choctaw and Chickasaw citizenship court, states exactly what was done by that court in its decree. The court says in its decree [reads]:

There were 263 cases transferred to this court, involving the right of 3,403 persons to citizenship in the Choctaw and Chickasaw nations. Of this number, 156 have been admitted to citizenship by this court and 2,798 persons denied citizenship; and 449 persons whose cases were dismissed for want of jurisdiction. Two hundred and twenty-nine persons who had their cases transferred to this court are included in the list of 3,403 persons mentioned heretofore who had obtained judgments of the United States courts for the southern and central districts of the Indian Territory admitting them and each of them to citizenship under the act of June 10, 1896.

You will observe the number of cases allowed by that court. Out of 3,403 cases passed upon by the court, 156 persons were allowed citizenship.

Mr. MCGUIRE. Just a moment, Mr. Ballinger. How was that court created?

Mr. BALLINGER. That court was created under the act of 1902. Provision creating this court was inserted as a part of the supplemental agreement with the Choctaws and Chickasaws approved July 1, 1902. These attorneys, Mansfield, McMurray & Cornish, came to Washington and represented to Congress that unless a provision was inserted in the supplemental agreement for the review of those court judgments under which these people were enrolled the Choctaw and Chick-

asaw people would not enter into any further agreement with the United States.

Mr. STEPHENS. After that contract was made those attorneys came to Washington and secured the passage of the legislation creating that court or commission?

Mr. BALLINGER. Yes, sir.

Mr. STEPHENS. They were then here working for the passage of that citizenship court bill and earning their fee? Was that part of the consideration?

Mr. BALLINGER. That was part of the consideration, and this contract antedates that legislation.

Mr. STEPHENS. They were procuring the legislation from Congress, and were successful in procuring that legislation?

Mr. BALLINGER. Yes.

Mr. STEPHENS. Did they state that they earned a part of the fee by having this legislation put through Congress?

Mr. BALLINGER. The court says in this decree (reads):

It is true that at the time this contract was entered into the chances for recovery were exceedingly remote, and if the attorneys had not succeeded they would not have received any compensation for their labor whatever.

Mr. STEPHENS. You are reading from the court record there, are you, of the judgment for fees they rendered in favor of these attorneys? Here is a letter that I will state I have from the Secretary of the Interior in regard to the resolution. [Submitting letter.] Probably you will find it in that.

Mr. BALLINGER. The provisions of law creating that court were sections 31, 32, and 33 of the act approved July 1, 1902. Now, these attorneys came to Congress under this contract and represented to the committees of Congress that unless a provision was placed in that legislation whereby these judgments of the United States courts could be reviewed and reversed the Choctaw and Chickasaw nations would refuse to ratify or confirm any agreements that might be proposed to them. Congress, which was imposed upon by those attorneys who were endeavoring to secure legislation that would enable them to get this premium of $432 per head for every person they could knock off the rolls, enacted the legislation whereby this citizenship court, so called, came into being; and the duty of this court was to review, revise and reverse judgments of the United States district courts, which judgments, as I have repeatedly said, were affirmed by the Supreme Court of the United States. The court in its decree says——

Mr. STEPHENS. What decree is that you speak of?

Mr. BALLINGER. The decree of the Choctaw and Chickasaw citizenship court, allowing the fee of $750,000 to these attorneys. (Reads:)

The evidence shows that there has been saved to the Choctaw and Chickasaw nations in money and property amounting in the aggregate to the sum of $15,850,000 by reason of the efforts of said attorneys. The evidence further shows that it was this firm of lawyers who brought this matter to the attention of the lawmaking powers and departments of the Government and impressed upon Congress and the departments the great wrong that had been done the nations by placing the persons known as "court claimants" upon the rolls and thereby allowing a great number of persons to participate in the distribution of the property belonging to these tribes who were not entitled to such benefits. The evidence further shows that it was through the persistence of these attorneys that legislation was secured that gave the nations the right of a retrial of these cases; and this was done at the personal expense of said firm, and that they

have never been paid or do not claim the right to be reimbursed in the way of expenses for the sums thus expended; that at each session of Congress since this contract was entered into up to the time of the passage of the act of July 1, 1902, that some member of this firm was in Washington endeavoring to impress upon the lawmaking powers and the departments the justness of the claim of the Choctaw and Chickasaw Indians, and insisting that legislation be enacted that would allow the citizenship cases to be retired. After the passage of the act of Congress approved July 1, 1902, creating this court and the organization of this court for the trial of these cases, the attorneys have tried them all in the most prompt manner in the face of the most bitter opposition, going into nearly all the Southern States seeking and securing testimony that proved beyond all doubt that many persons known as "court claimants" had no rights whatever as Indians but were in a large measure white people who had secured judgments by fraud and perjury.

In this decree the court does not say that "practically all of these people had procured fraudulent judgments," but it says "many of them." But in this decree it strikes down the rights of practically every man, woman, and child who was enrolled by the judgments of the United States district courts.

I shall ask the stenographer to print as a part of my remarks this entire decree, commencing on page 6 and headed, "In the Choctaw and Chickasaw citizenship court sitting at Tishomingo, Ind. T., December term, 1904."

Following is the entire decree referred to:

In the Choctaw and Chickasaw citizenship court, sitting at Tishomingo, Ind. T., December term, 1904. In the matter of the petition of Mansfield, McMurray & Cornish, the attorneys employed by contract, dated January 17, 1901, with the Choctaw and Chickasaw nations, to have the court fix a reasonable compensation for services rendered in the trial of court claimant citizenship cases under the act of Congress approved March 3, 1903—66.

OPINION.

It seems from the evidence introduced in this proceeding that on the 17th day of January, 1901, Gilbert W. Duke, principal chief of the Choctaw Nation, on the part of said nation, and Douglas H. Johnson, governor of the Chickasaw Nation, on the part of that nation, entered into the following contract with the law firm of Mansfield, McMurray & Cornish, to wit:

This agreement witnesseth:

First. That the parties in interest to this contract are the Choctaw Nation, by Gilbert W. Dukes, of Talihina, Choctaw Nation, Ind. T., principal chief thereof, and the Chickasaw Nation, by Douglas H. Johnson, of Emet, Chickasaw Nation, Ind. T., governor thereof, parties of the first part, and Mansfield, McMurray & Cornish, a firm composed of George A. Mansfield, J. F. McMurray, and Melvin Cornish, attorneys at law, residing at South McAlester, Ind. T., parties of the second part.

Second. That the authority under which this contract is entered into, the scope of such authority, and the reason for exercising the same, will appear from certain acts of the general council and the legislature of the Chickasaw Nation, as follows:

ACT OF CHOCTAW COUNCIL.

AN ACT To provide for the protection of the Choctaws and Chickasaws from the citizenship claims of those persons known as "court claimants."

Whereas many persons who are not Choctaw or Chickasaw Indians have fraudulently procured judgments of the United States court in Indian Territory, declaring them to be members of said tribes and entitled to allotments of tribal lands and property, and thereby the nations will lose several millions of dollars in lands and tribal property unless immediate and vigorous steps be taken to defeat the claims of said persons jointly by the Choctaw and Chickasaw nations: Therefore

Be it enacted by the general council of the Choctaw Nation assembled, That the principal chief of the Choctaw Nation is hereby authorized to enter into a contract, jointly with the governor of the Chickasaw Nation, with some suitable person or persons to defeat the claims of said "court claimants" under the alleged judgments: *Provided, however*, That the compensation to be paid

under said contract shall be upon the basis of a per centum of the value of the lands and property which said persons would otherwise receive under said alleged judgments, to be fixed in said contract by the principal chief of the Choctaw Nation and the governor of the Chickasaw Nation, who shall also, for the purposes of ascertaining the amount to be paid under said contract, agree as to the value of the lands and property which each one of the said persons would receive: *And provided further*, That such compensation shall be contingent upon the defeat of such persons and the protection of the tribes therefrom; and this act shall take effect and be in force from and after its passage and approval.

Passed the house January 7, 1901.
Passed the senate January 5, 1901.
Approved January 7, 1901.

G. W. DUKES,
Principal Chief, Choctaw Nation.

ACT OF THE CHICKASAW LEGISLATURE.

An act to provide for the protection of the Choctaws and Chickasaws from the citizenship claims of those persons known as "court claimants."

Whereas many persons who are not Choctaw and Chickasaw Indians have fraudulently procured what purport to be judgments of the United States court in the Indian Territory declaring them to be members of the tribes and entitled to enrollment and distribution of tribal property, and thereby said tribes will lose several millions of dollars in lands and tribal property unless immediate steps be taken to defeat the claims of said persons, jointly with the Choctaws: Therefore

Be it enacted by the legislature of the Chickasaw Nation, That the governor of the Chickasaw Nation is hereby authorized to enter into contract, jointly with the principal chief of the Choctaw Nation, with some suitable person or persons to defeat the claims of said "court claimants," under said alleged judgments, and before allotment and distribution of tribal property, as provided by treaty, the proper officer of the United States Government having the same in charge shall set apart so much of the funds of the Chickasaws as may be sufficient to pay the proper portion of the Chickasaws, or one-fourth of the aggregate compensation which may be due under said contract authorized to be entered into under this act, and to pay the same as may be provided in said contract: *Provided*, That the compensation to be paid under said contract shall be a per centum of the value of the lands and tribal property which said "court claimants" would have received in the event of allotment and distribution of tribal property to them, to be fixed in said contract by the governor of the Chickasaw Nation and the principal chief of the Choctaw Nation, who shall also, for the purpose of ascertaining the aggregate amount due under said contract, agree as to the value of the lands and tribal property which each of said "court claimants" would receive in the event of allotment and distribution of tribal property to them: *And provided further*, That such compensation shall be contingent upon the defeat of the claims of such persons and the protection of the tribes therefrom.

Passed the House January 10, 1901.
Passed the Senate January 10, 1901.
Approved January 10, 1901.

D. H. JOHNSON,
Governor Chickasaw Nation.

Third. That the particular purpose for which this contract is entered into is to secure the services of the said Mansfield, McMurray & Cornish, parties of the second part, in preventing allotment or distribution of tribal property to those persons who claim right thereto under alleged judgments of the United States court in Indian Territory, rendered under act of Congress approved June 10, 1896, and known as "court claimants."

Fourth. That the special thing to be done under this contract by the said Mansfield, McMurray & Cornish, parties of the second part, is to render their services, to the end that allotment or distribution of tribal property may be refused such so-called "court claimants."

Fifth. That the basis of the services herein contracted for by the said Choctaw and Chickasaw nations, parties of the first part, and agreed to be performed by the said Mansfield, McMurray & Cornish, parties of the second part, is the claim to allotment or distribution of tribal property under said alleged judgments by said so-called "court claimants."

Sixth. (*a*) That the compensation of the said Mansfield, McMurray & Cornish, parties of the second part, under this contract shall be 9 per cent of the value of the shares of tribal property which such of said so-called "court claimants," as hereinafter defined, as may be refused allotment or distribution of tribal property would have received in the event of allotment or distribution thereof to them, whether for past or future services to this end; and that for the purposes of this contract it is agreed that the share of tribal property a "court claimant" would receive, in the event of allotment and distribution thereof to him, is of the value of $4,800, and is hereby so fixed; and the term "court claimant," as herein used, shall include all persons whose names were embraced in what purported to be judgments of the United States courts in Indian Territory admitting them to Choctaw and Chickasaw citizenship under the said act of Congress approved June 10, 1896, and all persons who have been born to or become intermarried with them and who are claiming rights thereby.

(*b*) That such compensation shall be due and payable by the Treasurer of the United States, at the Treasury, out of any funds of the Choctaws and Chickasaws in the hands of the Government, in proportion of three-fourths out of Choctaw and one-fourth out of Chickasaw funds, whenever the roll of those persons entitled to allotment and distribution of tribal property shall become final.

(*c*) That compensation shall be ascertained and paid in the following manner: That the said Mansfield, McMurray & Cornish shall present to the Secretary of the Interior a true and correct list of such so-called "court claimants," as herein defined, and he shall, by comparing said list with said final allotment roll, ascertain the number of such "court claimants" refused allotment or distribution of tribal property, and also the aggregate value of the shares of tribal property which such persons would have received in the event of allotment and distribution thereof to them, by applying to such number of persons the value of a share of tribal property as herein fixed, of which aggregate sum the said Mansfield, McMurray & Cornish, parties of the second part, shall be entitled to 9 per centum. The Secretary of the Interior shall certify the amount thus due the said Mansfield, McMurray & Cornish under this contract, and upon such certificate payment shall be made as herein provided.

Seventh. That the fixed time for which this contract is to run is five years from March 4, 1901.

In testimony whereof we have hereunto set our hands at Sherman, Tex., on this January 17, 1901.

GILBERT DUKES,
Principal Chief, Choctaw Nation,
on the part of the Choctaw Nation.

DOUGLAS H. JOHNSON,
Governor of the Chickasaw Nation,
on the part of the Chickasaw Nation,
Parties of the First Part.

MANSFIELD, MCMURRAY & CORNISH,
Parties of the Second Part.

On the 3d day of March, 1903, an act of Congress was approved entitled "An act making appropriation for the current and contingent expenses of the Indian Departments and for fulfilling treaty stipulations with various Indian tribes for the fiscal year ending June thirtieth, nineteen hundred and four, and for other purposes," in which it is provided "that upon the final determination of cases within the jurisdiction of said citizenship court, said court may fix reasonable compensation to the attorneys employed by contract, dated January seventeenth, nineteen hundred and one, with the Choctaw and Chickasaw nations, and such determination shall be made irrespective of the rate fixed in said contract between said attorneys and said nations, or either of them, unless the same shall have received the approval of the Secretary of the Interior. And upon the final determination of said cases by said citizenship court the Treasurer of the United States is hereby directed to pay to said attorneys on the warrant or warrants drawn by the Secretary of the Interior the amount of such compensation out of any funds in the Treasury belonging to said nations."

It will be seen by reference to the above contract that the Choctaw and Chickasaw nations through their respective representatives agreed to pay to the attorneys mentioned in said contract "9 per centum as a compensation for

their services of the value of the shares of the tribal property which such persons whose names were embraced in what purported to be judgments of the United States courts in the Indian Territory admitting them to Choctaw and Chickasaw citizenship, under the act of Congress approved June 10, 1896, and known as 'court claimants,' and all persons who have been born or become intermarried with them and who are claiming rights thereby."

There were 263 cases transferred to this court, involving the right of 3,403 persons to citizenship in the Choctaw and Chickasaw nations. Of this number 156 have been admitted to citizenship by this court and 2,798 persons denied citizenship, and 449 persons whose cases were dismissed for want of jurisdiction. Two thousand two hundred and ninety persons who had their cases transferred to this court are included in the list of 3,403 persons mentioned heretofore who had obtained judgments of the United States courts for the southern and central districts of the Indian Territory admitting them and each of them to citizenship under the act of June 10, 1896; in addition to this number there are 211 persons who were in possession of judgments of said courts obtained under said act of June 10, 1896, and whose judgments were declared void by this court in the "test suit" provided for in section 31 of an act of Congress approved July 1, 1902, and who did not have their cases transferred to this court under section 32 of the act of Congress approved July 1, 1902, who had been denied citizenship by the United States courts for the southern and central districts of the Indian Territory under the act of Congress approved June 10, 1896. The attorneys mentioned in said contract have furnished a list of 669 persons who have been born to or become intermarried with persons who had favorable judgments of the United States courts under the act of Congress approved June 10, 1896, and who had been denied citizenship by the Commission to the Five Civilized Tribes by reason of the judgment of this court in declaring void the judgment held by those with whom they had intermarried or were born of.

The attorneys contend that they are entitled to compensation at 9 per cent on the value of the shares of 2,290 persons who had favorable judgments of the United States court for the Indian Territory and who had their cases transferred to this court and were here denied citizenship, as well as a compensation of 9 per cent on the value of the share of 211 persons who had favorable judgments of the United States court, and whose judgments were declared void by this court in the decision thereof in what is known as the "test suit" and who failed to have their cases transferred to this court; also a like per cent on the value of the shares of 669 persons who have been born to or become intermarried with the persons known as "court claimants."

In other words, the attorneys mentioned in the contract claim and insist that this contract should be approved by this court and that this court should allow them as a compensation for their services 9 per cent of the value of 3,710 shares in the tribal property of the Choctaw and Chickasaw tribes of Indians, as this is the correct number of persons who have been kept from participating in the distribution of the tribal property of these two tribes by reason of their efforts under the contract dated January 17, 1901. From the evidence in this proceeding a share in the tribal property belonging to the Choctaw and Chickasaw nations is worth the sum of $5,000, and at the time this contract was entered into on the 17th day of January, 1901, there were 250 persons in possession of judgments of the United States court in the Indian Territory declaring each of them members of the Choctaw and Chickasaw nations, whose judgments have been by this court set aside and vacated and thereby their right to citizenship denied; that there are 669 persons who have been born to or become intermarried with persons who possessed favorable judgments known as "court claimants;" that all the services contracted for to be performed under the contract bearing date of January 17, 1901, have been performed by the attorneys, Mansfield, McMurray & Cornish; that these services have been performed with intelligence, promptness, and fidelity toward the Choctaw and Chickasaw Indians; that there has been a final determination of all the cases within the jurisdiction of this court; that said attorneys have completed their services under said contract; and at the time said contract was entered into the persons known as "court claimants" were in possession of judgments that then seemed to be absolute and that there was no provision in the law at that time to retry the cases. The evidence shows that there has been saved to the Choctaw and Chickasaw nations in money and property amounting in the aggregate to the sum of $15,850,000 by reason of the efforts of said attorneys.

The evidence further shows that it was this firm of lawyers who brought these matters to the attention of the lawmaking powers and Departments of the Government and impressed upon Congress and the Departments the great wrong

which had been done the nations by placing the persons known as "court claimants" upon the rolls and thereby allowing a great number of persons to participate in the distribution of the property belonging to these tribes who were not entitled to such benefits. The evidence further shows that it was through the persistence of these attorneys that legislation was secured that gave the nations the right of a retrial of these cases, and this was done at the personal expense of this firm, and that they have never been paid and do not claim any right to be reimbursed in the way of expenses for sums thus expended; that at each session of Congress since this contract was entered into, up to the time of the passage of the act of Congress approved July 1, 1902, some member of this firm was in Washington endeavoring to impress upon the lawmaking powers and the Departments the justness of the claim of the Choctaw and Chickasaw Indians and insisting that legislation be enacted that would allow the citizenship cases to be retired. After the passage of the act of Congress approved July 1, 1902, creating this court, and the organization of this court for the trial of these cases, the attorneys have tried them all in the most prompt manner, in the face of the most bitter opposition, going into nearly all the Southern States seeking and securing testimony that proved beyond all doubt that many of the persons known as "court claimants" had no rights whatever as Indians, but in a large measure were white people who had secured judgments by fraud and perjury.

If the per cent agreed on in the contract be adhered to, the compensation to the attorneys would be $1,426,500.

A number of witnesses have testified in this matter before this court to the effect that the provisions of said contract should be carried out, and that the amount claimed by said attorneys was not excessive for the services performed, a number of them placing a reasonable compensation much higher than is designated in the contract.

It is true that at the time this contract was entered into the chances of recovery were exceedingly remote, and if the attorneys had not succeeded they would not have received any compensation for their labor whatever.

As contained in this statement heretofore, there were 508 persons whose cases were transferred to this court under section 32. These cases were looked after with as much diligence as any case before court, notwithstanding the fact the contract did not cover this class of cases. The principal chief of the Choctaw Nation and the governor of the Chickasaw Nation have filed statements with this court insisting that the provisions of the contract be carried out and that the attorneys be allowed the compensation agreed upon.

So the question is, What is a reasonable compensation for the services rendered? In our opinion, the compensation fixed by the contract would be excessive, but the sum of $750,000 would be a reasonable compensation and should be allowed the firm of Mansfield, McMurray & Cornish for all services connected with citizenship matters under the contract dated January 17, 1901, and in lieu of all expenses save and except such as are provided for by law, as set out in section 33 of the act of Congress approved July 1, 1902, and said amount is hereby fixed and allowed as a reasonable compensation to said attorneys in this behalf.

In stating that the sum of 9 per cent as set out in the contract is excessive we do not mean to be understood as finding any bad faith upon the part of said attorneys in getting such a contract, but simply mean to say that such a per cent as applied to the services performed is above what we now think a reasonable fee for the services performed by said attorneys, and the great amount of benefits derived and the very large amount of money and property recovered, when if, as a matter of fact, a less amount had been recovered, a greater per cent might have been proper for us to allow.

SPENCER B. ADAMS,
Chief Judge.
WALTER L. WEAVER,
Associate Judge.
HENRY S. FOOTE,
Associate Judge.

Mr. BALLINGER. Now, I hope that I have made the provisions of the contract, the manner in which that legislation was procured, and the manner in which these judgments were procured by that citizenship court reasonably clear to the committee.

Mr. MORSE. Pardon me. What is the remedy sought in this bill No. 15649?

Mr. BALLINGER. This bill proposes to extend to about 10,000 people who have been denied their rights, admittedly through error of law, fraud, and gross mistake of facts, the right freely enjoyed by every citizen and noncitizen Indian within the limits of our country, excepting only the members of the Five Civilized Tribes, to go into a Federal court and have his or her case heard and determined in open court, with notice to the world, and to have judgment rendered by that court for or against him.

Mr. MORSE. They never had their day in court?

Mr. BALLINGER. They have never been heard in a constitutional court in all their lives. Some of these people were heard before the United States district court of the Indian Territory, and the judgments of those courts were affirmed by the Supreme Court of the United States They procured judgments in those courts, with notice to the world, and this Commission that I am talking about, in the secret recesses of its apartments down there, struck down and annuled every judgment of the United States district court.

This will be the first time that a constitutional court has had an opportunity to inquire into the rights of these people. Heretofore their claims have been determined upon a question of citizenship. In this country and in this estate rights are not dependent upon citizenship. Under the grant every person who was a member of the Choctaw community in 1830, or who was a descendant of such member, had a vested right in that common property at his birth, so that his rights could in no way be dependent upon a question of citizenship.

Mr. MORSE. Pardon me once more. How many are there?

Mr. BALLINGER. The firm of Ballinger & Lee, our firm, represents to-day 8,000 of these claimants. There are probably 12,000 or 15,000 persons who claim that they have been denied their rights and who have never had opportunity to be heard in court.

Mr. MORSE. I hope you will pardon me for being so persistent, but——

Mr. BALLINGER. I appreciate the interruption, as it indicates your interest.

Mr. MORSE. Why did they not go into the district courts, if they had the right to, prior to the time of the creation of this Commission?

Mr. BALLINGER. If you please, all of these people where judgments had been adversely rendered in their cases went into the United States district courts on appeal and there procured judgments. In the great majority of cases the Commission had not acted upon them. They did not know whether their rights had been denied or not, and therefore it was impossible for them to go into that court under the provisions of that act. The great majority of these people were enrolled under subsequent acts of Congress, the act of 1898 particularly. Under the act of 1896 the tribes had not recognized the right of the Government to interfere in their affairs.

Mr. MORSE. I see.

Mr. BALLINGER. Now, Mr. Chairman, as I endeavored to point out to you the other day, the judgments of that citizenship court—it is alleged, and there is abundant evidence to sustain that allegation—

were procured from that court by fraud, by open, notorious bribery of two members of that court.

Mr. McGUIRE. How many members of that court were there?

Mr. BALLINGER. Three.

Mr. McGUIRE. There were only three present who constituted the citizenship court, which court tried and determined the rights of all these parties to be enrolled? Is that true?

Mr. BALLINGER. Yes, sir. That is, all these persons who had secured judgments in the United States district courts. The jurisdiction of this legislative commission did not run to anything else except the power to review, revise, and annul the judgments of the United States district courts, which had been affirmed by the Supreme Court of the United States, and then try de novo all cases heard and determined by the United States district courts.

Mr. MORSE. Pardon me just a moment. You say that a great many of these judgments were procured by open, notorious bribery. Was there anything done to punish the members of this court for bribery?

Mr. BALLINGER. The members of this Choctaw and Chickasaw citizenship court?

Mr. MORSE. Yes.

Mr. BALLINGER. If you please, sir, the attorneys who bribed the members of that court, evidence of which has been in the possession of the Secretary of the Interior for at least ninety days now, and no action has been taken by the Secretary of the Interior, although the time is rapidly expiring in which they can be indicted—that firm of attorneys were indicted, not for this particular offense, but for a similar offense, the indictment being returned at Ardmore in the year 1905 by a Federal grand jury. That indictment was never tried. The United States attorney who attempted to prosecute those parties, and who refused in response to orders from the Attorney-General of the United States to dismiss the indictments, was summarily removed from office. Another United States attorney on the 14th day of November, 1907, in response to a telegraphic order from the Attorney-General of the United States, went into court and dismissed these indictments, and the Attorney-General of the United States said in his telegram to that officer—and I think I can quote the exact words, for I was in the office of the United States attorney when that telegram was received, and I saw it with my own eyes:

> Be sure and see that the indictments against Mansfield, McMurray, and Cornish are dismissed before the Territorial courts pass out of existence and the new State courts come into being.

Is it any wonder that indictments were not returned against members of this citizenship court, and against the attorneys for bribing the members of this citizenship court, when indictments good on their face were dismissed by the order of the Attorney-General of the United States against these attorneys, and they were never permitted to bring these guilty men before the bar of justice or to trial?

These facts are all sustained by the record; and one word more, if you want to hear it [addressing Mr. Morse]: The other day, when before this committee, I stated that every roll of the citizens of the Choctaw and Chickasaw nations made by the Government officers is saturated with fraud. One officer of the United States, while actually in the employ of the Federal Government, went into the office of Mans-

field, McMurray & Cornish, these same attorneys, and there remained for one month preparing cases against these applicants, and the next month passed back into the Commission, and there, in the name of the United States and for and on behalf of the Commission, passed upon and adjudicated and determined the rights of the poor devils whose cases he had briefed against them when in the office of these attorneys.

Mr. McGUIRE. Do you mean to say that party was a member of the citizenship court?

Mr. BALLINGER. That party was William O. Beall, the secretary of the Commission to the Five Civilized Tribes. I want to read here an extract from his testimony in this case. There is the record of his investigation upon which he was dismissed from the service, and which resulted also in the resignation, if not the dismissal, of Tams Bixby. It is Senate Document No. 357, Fifty-ninth Congress, second session. Mr. Beall was answering under oath with reference to the hearings had in the cases of claimants [reads]:

Q. Now, Mr. Beall, I want to ask you if you have at any time in the hearing of any cases ever quoted a provision from a bill pending in Congress which had not become a law for the purpose of determining the rights of the applicants?—A. Yes, sir.

Q. Can you state in what case?—A. I couldn't now. In a great number of cases.

Think of adjudicating the rights of these people under bills pending in Congress that were not laws and never became laws, and depriving them of their property in that way! Mr. Chairman, history does not recall a more infamous transaction than that which permeates and runs through the adjudication of all these cases.

That is only one instance of the fraud perpetrated by administrative officers on these people. There is other evidence of the fraud that runs through these cases. Another evidence of the fraud practiced by the Indian officials and the attorneys in order to defeat the rights of claimants is found in the following notice, which was sent out broadcast to claimants. Appointments had been made in the Choctaw and Chickasaw nations for the examination of these people. Receiving the following notice from the attorneys of the nations, they did not appear at the appointed places, as they so advise counsel, and in many instances judgments by default were entered by reason of their failure to so appear, and it was held by the Commission that their claims were therefore barred by their failure to appear at the appointed places and times. Here is the actual notice sent to them [reads]:

SOUTH MCALESTER, IND. T.,
November 10, 1900.

_____,
Durant, Ind. T.:

You are hereby advised, in compliance with the direction of the Commission to the Five Civilized Tribes, that the Choctaw and Chickasaw nations object to your enrollment upon the ground: No right to enrollment.

You are further advised that no testimony on behalf of the Choctaw and Chickasaw nations will be taken at the appointment of the Commission to the Five Civilized Tribes at Atoka, Ind. T., beginning December 3, 1900; and that it will not be necessary for you to appear at that time and place unless you desire to do so in your own behalf.

THE CHOCTAW AND CHICKASAW NATIONS,
By MANSFIELD, MCMURRAY & CORNISH,
Attorneys.

Those people accepted that as a notice that their cases would not be heard. When that time arrived, the attorneys for the Choctaw and Chickasaw nations were on hand, the cases were called, and judgments were taken by default, and the names of those persons forever stricken from the tribal rolls.

But the Secretary of the Interior and the Commissioner of Indian Affairs can not shirk responsibility with reference to the adjudication of these cases, and I am glad that an officer of the Indian Bureau is here this morning, that he may make defense, if he can. Every technicality and subterfuge known to the officers of the Department of the Interior, including the Commissioner of Indian Affairs, was employed by the offices of the Secretary of the Interior, the Commissioner of Indian Affairs, and the Commission to the Five Civilized Tribes to defeat the rights of claimants and thus deprive them of their legal property rights.

Mr. MORSE. What are you reading from?

Mr. BALLINGER. From my own notes. This is a statement that Mr. Ward, who passed upon these cases, will not deny. The assistant attorney for the Department of the Interior, whose office has been the one haven of refuge for claimants, and who have uniformly secured a reasonable adjudication of their rights when the Secretary of the Interior was gracious enough to permit them to have their cases referred to that office for a legal opinion, rendered a line of legal opinions which were approved by the Secretary of the Interior, and thereby became the laws of the Department in the adjudication of cases of claimants. These laws left no room to the administrative officers to deny the rights of claimants in thousands of cases where they were subsequently denied. In order to circumvent these decisions an opinion was prepared by an employee of the legal department of the Indian Office who was insane at the time he wrote the opinion, and who was, within a few days thereafter, adjudged by the supreme court of the District of Columbia to be insane, and by its decree incarcerated in St. Elizabeth Insane Asylum across the river, and who subsequently died in the insane asylum.

This decision, prepared by this lunatic, was written in a case arising from the Cherokee Nation, where different laws governed the enrollment of applicants. This lunatic decided questions not in the record of that case and not before the Department for determination. This decision rendered by this lunatic was pro forma affirmed by the Commissioner of Indian Affairs and thereafter pro forma affirmed by the Secretary of the Interior.

Immediately upon the affirmation of this decision by the Secretary the officers of the Indian Territory division of the Secretary's Office, the officers of the Indian Bureau, and the officers of the Commission to the Five Civilized Tribes seized upon this decision in order to circumvent the decisions rendered by the legal department. In practically every decision denying the rights of claimants rendered by the Commissioners to the Five Civilized Tribes, the Commissioner of Indian Affairs, and the Secretary of the Interior, from that day until the jurisdiction of all these officers ceased and terminated on the 4th day of March, 1907, by operation of law, the decision of this lunatic was invoked and referred to in the decision rendered in the case as "Departmental letter of May 25, 1906, I. T. D., 9,114—1906."

I now pause to ask Mr. Ward, because he has charge of that, whether that statement is true or false.

Mr. WARD. What case is it? I did not have charge of it.

Mr. BALLINGER. That is the case of Laura E. Akin.

Mr. WARD. I could not tell without looking up the record.

Mr. BALLINGER. Was not that case written by—I will not mention his name, because he is dead—M. M. M.? Do you not know who that man was?

Mr. WARD. Yes.

Mr. BALLINGER. Was he not taken from your office by order of the supreme court of the District of Columbia and incarcerated in the insane asylum across the river?

Mr. WARD. He was not.

Mr. BALLINGER. Was he not incarcerated?

Mr. WARD. He was not taken from our office, but from his home. He had been sick at his home for two weeks.

Mr. BALLINGER. He died in the insane asylum?

Mr. WARD. He did.

Mr. MCGUIRE. Mr. Ballinger, you are reading from manuscript there, and part of this you went over the other day. Mr. Stephens and myself have heard it, and as it is manuscript, unless Mr. Morse wants to hear it further along that line, I do not suppose it will be necessary to do more than simply embody it in the record.

Mr. BALLINGER. I think that would be sufficient.

Mr. MORSE. I think that would be preferable,

Mr. MCGUIRE. You have occupied about forty minutes now.

Mr. BALLINGER. I want, before I close, to show to the members of this committee pictures of some of the people whose rights have been denied [submitting photographs]. I would like you to see with your own eyes what kind of people these are who have been denied their rights. I expected to have photographs here of several hundred of them, but these are all that have come at the present time. These people are held to be negroes and white men by the Commission.

Mr. MCGUIRE. You hardly expect that we are expert enough to tell from these photographs, do you, Mr. Ballinger?

Mr. BALLINGER. Those photographs bear all the impress of full-blood Indians.

(The following additional matter was submitted by Mr. Ballinger under leave to print:)

In the annual report of the Secretary of the Interior for the year ending June 30, 1907, appears the following paragraph with reference to the adjudication of the rights of claimants to share in the tribal property of the Choctaws and Chickasaws:

> Requests have been presented and doubtless efforts will be made to reopen some if not all of these rolls, but it is to be hoped that such action will not be taken. Without doubt there are persons on the rolls who are not entitled to be there, and there are persons not on the rolls whose names should be there, but after the years of painstaking inquiry and determination made by the citizenship court, by the Commissioner to the Five Civilized Tribes, and finally by the Secretary of the Interior, it is believed that the cases of injustice or mistake are too few to justify an action that would surely result in thousands of claims being presented for readjudication.

What is this the Secretary says: "Without doubt there are persons on the rolls who are not entitled to be there, and there are persons not on the rolls whose names should be there;" and then adds, "but

after the years of painstaking inquiry and determination made by the citizenship court," which court it is alleged and generally believed was composed of at least two of the most corrupt scoundrels that ever sat as members of any court or commission and whose infamy was known to the Secretary when this report was written; and he then adds, " by the Commission to the Five Civilized Tribes," the members of which ignored and disregarded both the mandate of the statute and the instructions of the Department in order to defeat the rights of honest claimants, and permitted its officials to accept employment from the firm of attorneys employed to defeat the rights of honest claimants while actually in the employ of the Government, and who while in the employ of that firm of attorneys briefed cases against applicants, and then returned to the Commission and passed upon, in an official capacity, the very cases he had prepared and briefed while in the employ of said attorneys, and who, in order to defeat the rights of honest claimants, suppressed the records in their cases, covered up the evidence of their rights and deceived applicants by false and misleading representations, all of which facts were matters of public record and well known to the Secretary when this report was written; and lastly the Secretary adds, " and finally by the Secretary of the Interior," evidently overlooking the official reports to the Senate, wherein his predecessor advised the Senate that between February 25 and March 4, 1907—exactly one week—the Secretary examined and decided 2,023 cases, involving the rights of upward of 10,000 claimants; and then the Secretary adds, " it is believed that the cases of injustice or mistake are too few to justify an examination that would result in thousands of claims being presented for readjudication."

Is this not a remarkable statement? Is it not upon its face so inconsistent, contradictory, and illogical that the recommendation can not be accepted or followed?

This " painstaking inquiry and determination made by the citizenship court, by the Commissioner to the Five Civilized Tribes, and finally by the Secretary of the Interior," which the Secretary assigns as a valid reason why these claimants should not be heard (for they have never in reality ever had their cases heard and determined), undoubtedly relates to the pains taken by the Commission to the Five Civilized Tribes not to make a record of the actual testimony taken in any case while it was in the field examining claimants in 1898 and 1899; to the adjudication and determination of the rights of claimants under provisions of bills pending in Congress which were not then and never became laws; to the pains taken by the Commission to suppress the records in the cases of claimants in order to prevent the true facts from becoming known to the Secretary of the Interior; to the pains taken by the citizenship court to defeat the rights of honest claimants in order to enhance the individual fortunes of members of that court; to the pains taken by the Secretary of the Interior, when passing upon these cases finally, when more than 2,000 cases were examined and decided by him in less than one week, involving the rights of more than 10,000 claimants.

In substance the Secretary says in this official document that to purge the rolls of fraudulent names or to permit rightful claimants who have been denied their property rights to present their claims in open court and have them adjudicated by a judicial tribunal will

involve so much labor and be so much trouble that he prefers that their claims should not be heard, although it is well known that claimants have never in fact had any hearing and have been deprived of their property through deception and fraud.

Would not an administrator of an estate who would dare make such a report to a court be summarily removed? Would any court in this land tolerate such brazen, culpable neglect of duty? Will Congress permit these people to be denied their property because of the corruption and criminal negligence of its agents and officers? Could anything be more binding upon the United States Government than an impartial, fair, and equitable distribution of these trust properties among the legal and equitable beneficiaries? Is it not a sacred duty which the National Government owes to these people to see that each and every one of them is given his share of the property? Can any reason be assigned why those who have been erroneously denied their rights by administrative officers should not have an opportunity to have their claims heard and determined by a competent tribunal? Is the Secretary of the Interior—charged by law with the administration of these estates—relieved of responsibility because the outrages perpetrated upon these people by administrative officers occurred under the administration of his predecessor? Is not Secretary Garfield the residuary legatee of all the errors committed and the wrongs inflicted upon these people under the administration of his predecessor? By what known rule of law or principle of equity can he now, as administrator of these estates, oppose, resist, or refuse a reexamination into every case of every person who claims to have been deprived of his rights through errors of law, fraud, or gross mistake of fact committed by administrative officers in the past?

These estates are now practically intact. Every fraudulent allotment made can now be canceled and every rightful claimant given his share of the property. In the Choctaw and Chickasaw nations there still remain unallotted 4,525,739 acres of land, including the 1,386,720 acres withdrawn by order of the Secretary of the Interior, contrary to law, for the purpose of establishing a forest or a game preserve.

REAL INDIANS ARE NOT OBJECTING TO RECEIVING THEIR PROPERTY RIGHTS.

It is not the full blood Choctaws and Chickasaws that are objecting to claimants receiving their property rights. It is the mixed breed, in most cases one thirty-second or one sixty-fourth Indian blood, or the intermarried or adopted citizen, without one drop of Indian blood, who has been given a property right under acts of Congress or through favoritism extended by the administrative officers, in both cases without authority of law. It is from this class of people that the protests against claimants receiving their property come—the same designing class of people who held practically the entire trust estate for their exclusive use and benefit prior to the intervention of the Government of the United States, and who were directly responsible for the intervention by the United States in order to protect the rights of the great majority of the rightful beneficiaries under the trust.

Whatever may have been the real purpose of Congress in interfering in the affairs of the Choctaw and Chickasaw Indians—whether

it was the patriotic and laudable desire to administer upon this trust estate, so that every person who was in law, equity, and good conscience entitled to receive his individual share should receive it, or whether the intervention was for political and selfish purposes—certain it is that conditions in these nations are in an infinitely worse condition than before the intervention of the Federal Government. Before this intervention claimants were permitted to live upon their lands and to enjoy the improvements made thereon and the fruits of their labor. Under the criminal mismanagement of this estate by administrative officers of the Federal Government many of claimants have been driven from their homes in which they have lived all their lives; driven from the land they have cultivated for fifty years; their homes and all their improvements thereon, the result of the savings of years, given to white men—adopted or intermarried. In many instances the result of the labor of a family for a generation has been confiscated by the Federal Government and the property turned over to either a white intermarried or an adopted citizen or some worthless mixed breed, probably one sixty-fourth Indian blood, too indolent to ever erect a home in which to live.

ACTUAL CASE.

Let us illustrate this further by an actual case. A person of seven-eighths Choctaw blood, who was married to a woman of three-quarters Choctaw, was living in the home built by his grandfather on this trust property. He was one of that class of persons known as a "court-judgment citizen," as he, his wife, and their children had been decreed by judgment of the United States district court for the southern district of the Indian Territory to be a Choctaw Indian by blood and descent, and duly enrolled as such by the Commission. The judgment of the United States district court in his case had been vacated by the decision of that now famous legislative commission known as the "Choctaw-Chickasaw citizen court." Some time after the rendition of the decree of this legislative commission, Indian police were sent to his home to eject him from the land and home built by his grandfather, and in which he was born. They arrived at midnight during the latter part of November. It was a cold, inclement night, sleeting and raining. When these officers arrived his wife was in the throes of childbirth. They served notice on him that he must vacate his home that night. He pleaded with them not to enforce the order, as it was impossible to move his wife. The officers refused. Grabbing his rifle he attempted to shoot the Indian police. His wife pleaded with him not to commit such an act. Finally the Indian police agreed that he and his wife might remain until 5 o'clock the next morning. Shortly after daybreak the new-born child was wrapped in a blanket and the wife was laid in a lumber wagon and driven to a neighbor's house several miles distant. That home, with all the improvements placed upon it by his grandfather, his father, and himself, is now in the possession of an intermarried citizen who has no legal right to the property.

BLOOD RELATIVES OF CLAIMANTS CLAIMING THROUGH THE SAME COMMON ANCESTORS ON TRIBAL ROLLS AND CLAIMANTS DENIED ENROLLMENT.

These 10,000 claimants acquired their right to share in this trust property from the same common source from which the great majority of those who have been enrolled as blood citizens acquired their

rights. In many instances the grandmother and grandfather, or grandmother or grandfather, or mother and father, or mother or father, or sisters and brothers, or sister or brother, or other blood relatives of claimants, have been enrolled and have received their individual share of this trust property. The certified records contained in volumes 1 and 2, Senate Report No. 5013, Fifty-ninth Congress, second session, show these to be incontestable facts.

CHILDREN OF SIGNERS OF TREATY OF 1830, UNDER WHICH GRANT WAS MADE, DENIED THEIR RIGHTS.

In other cases the children of the signers of the treaty of 1830, under which the grant was made, have been denied their rights, notwithstanding the fact that they have been residing in the Choctaw or Chickasaw nations for the last twenty-five years, as is evidenced by the following official document in the case of John T. Williams, a resident of Swink, Choctaw Nation, and who is the son of Ambrose Williams, who was one of the representatives of the Choctaw Nation who negotiated the treaty of 1830, and whose name appears thereon as one of the signers of that treaty.

DEPARTMENT OF THE INTERIOR, OFFICE OF INDIAN AFFAIRS,
Washington, May 4, 1907.

JOHN T. WILLIAMS, Esq., *Swink, Ind. T.*

SIR: The Office is in receipt of three letters written by you, one addressed to the Attorney-General of the United States, one to the Department of the Interior, and one to this Office, relative to your enrollment as a citizen of the Choctaw Nation, and saying that you are going to have your rights as a citizen before you quit, and that you are going to appeal to the Supreme Court of the United States.

In reply, the Office can only repeat what it has told you heretofore, that it has no jurisdiction to consider any citizenship matter since the 4th of March, 1907, and that there is now no authority of law for placing the name of any person on any of the rolls of the Five Civilized Tribes in the Indian Territory.

There was no question in your case as to your Indian blood, and it was not denied by the Commissioner to the Five Civilized Tribes that you were a person of Indian blood. However, the possession of Indian blood was not enough under the law to justify your enrollment as a citizen of the Choctaw Nation. There are many persons of Indian blood who are not entitled to enrollment as citizens of the Five Civilized Tribes in the Indian Territory.

The Office sees no reason to object to your appeal to the Supreme Court of the United States, if you so desire.

Very respectfully,

C. F. LABRABEE, *Acting Commissioner.*

GRANTING OF RELIEF ASKED BY CLAIMANTS WILL NOT DISTURB TITLES IN THESE TRUST LANDS.

Claimants are not asking relief that will unsettle conditions in the Choctaw or Chickasaw nations. They are not asking to disturb titles to allotments heretofore made. They are asking merely the right, freely enjoyed by each and every one of the persons enrolled, to select from the unallotted lands allotments equal in value and extent to the allotments heretofore selected by those persons enrolled by the administrative officers. There is still remaining approximately 3,000,000 acres of unallotted lands, the common property of the Choctaws and Chickasaws, and from these unallotted lands claimants desire the right to select their allotments. Is it possible that although they are beneficiaries, equal with those persons who have been enrolled by the administrative officers, under the treaties and the grant and each and every act of Congress, that because of errors of law, fraud, and

gross mistake of fact committed by the administrative officers, they are to-day remediless? To assert that they are is to assert a proposition so monstrous that it can receive no sanction or recognition by a tribunal composed of honest men.

The following resolution was transmitted by the Senate Indian Committee to the Secretary of the Interior for report thereon:

[Senate Resolution No. 69. Sixtieth Congress, first session.]

Resolved, That the Secretary of the Interior be, and he is hereby, directed to transmit to the Senate the following records and information:

First. A list of the rolls which have been prepared since eighteen hundred and thirty of the Choctaw and Chickasaw Indians by Government officers, agents, or representatives, the designation of each of said rolls, the name of the person or persons who prepared each of said rolls and the year in which each of said rolls was made, and the purpose for which each of said rolls was made.

Second. A list of the rolls of the Choctaw and Chickasaw Indians prepared by the officials, representatives, agents, or individual members of the Choctaw and Chickasaw nations from eighteen hundred and eighty to nineteen hundred, inclusive, and now in the custody and possession of the Department or any bureau, division, or commission thereof or thereunder; the designation of each roll and by whom and in what year or years each of said rolls was prepared, and the purpose for which each of said rolls was made.

Third. Which of said rolls were in the custody and possession of the Commission to the Five Civilized Tribes and were used by said Commission in the preparation of the "final citizenship rolls" of the Choctaw and Chickasaw Indians.

Fourth. A full copy of the decision of Honorable Frank L. Campbell, Assistant Attorney-General of the United States, rendered under date of March twenty-fourth, nineteen hundred and five, in the case of Mary Elizabeth Martin, applicant for enrollment as a citizen of the Choctaw Nation.

Fifth. A copy of the report of the Commission to the Five Civilized Tribes, under date of January twenty-fourth, nineteen hundred and three, in the case of Bettie Lewis, respecting the authenticity and reliability of the rolls therein referred to, and which report is particularly referred to in the decision of the Assistant Attorney-General in the case of Mary Elizabeth Martin, rendered March twenty-fourth, nineteen hundred and five.

Sixth. A copy of the opinion of Honorable Willis J. Van Devanter, Assistant Attorney-General of the United States, rendered under date of March seventeenth, eighteen hundred and ninety-nine, as approved by the Acting Secretary of the Interior, Honorable Thomas Ryan, on March seventeenth, eighteen hundred and ninety-nine, for the guidance of the Commission and the Department in the preparation of the "final rolls of citizenship" of the Choctaws and Chickasaws.

Seventh. Whether the records of the Department and the Commission to the Five Civilized Tribes show that any person whose name appears on any tribal roll of the Choctaw and Chickasaw tribes, or his or her descendants, have been denied enrollment on the "final citizenship rolls" of said tribes and denied the right to share in the tribal property, and approximately how many have been so denied.

Eighth. A copy of the instructions prepared by Honorable W. A. Jones, Commissioner of Indian Affairs, under date of July twenty-fifth, eighteen hundred and ninety-nine, and approved by the Acting Secretary of the Interior, Honorable Thomas Ryan, August eighth, eighteen hundred and ninety-nine, prescribing rules and regulations for the guidance of the Commission to the Five Civilized Tribes in the examination of persons as to their right to enrollment on the final citizenship rolls of said tribes, appearing before said Commission under the provisions of the act approved June twenty-eighth, eighteen hundred and ninety-eight.

Ninth. A copy of the notice issued by the Commission to the Five Civilized Tribes under the act approved June twenty-eighth, eighteen hundred and ninety-eight, directing all persons claiming any rights in the Choctaw and Chickasaw nations to appear before said Commission at certain specified places and times for examination and identification.

Tenth. Whether the records in the custody and possession of the Department and the Commission to the Five Civilized Tribes show that all persons appearing before the Commission under the provisions of the act approved June

twenty-eighth, eighteen hundred and ninety-eight, were examined by said Commission as to their Indian blood and descent under oath and their exact statements reduced to writing and made of record.

Eleventh. Whether the records in the possession and custody of the Department and the Commission to the Five Civilized Tribes show that persons of mixed Choctaw or Chickasaw Indian and negro blood appearing before said Commission under the provisions of the act approved June twenty-eighth, eighteen hundred and ninety-eight, were examined by said Commission under oath solely as to their negro blood and descent and their testimony reduced to writing and made of record.

Twelfth. Whether the records in the possession of the Department and the Commission to the Five Civilized Tribes show that any other class of persons excepting only persons of mixed Choctaw or Chickasaw Indian and negro blood, appearing before said Commission under the provisions of the act approved June twenty-eighth, eighteen hundred and ninety-eight, were examined under oath and their statements reduced to writing and made of record.

Thirteenth. Whether the records of the Department and the Commission show that persons of mixed Choctaw or Chickasaw Indian and negro blood have been enrolled as "freedmen" and denied enrollment as Indians, regardless of the quantum of their Indian blood.

Fourteenth. Whether the quantum of Choctaw or Chickasaw Indian blood was held by the Department to be material in the determination of the rights of persons of mixed Choctaw or Chickasaw Indian and white blood.

Fifteenth. The number of acres and the appraised value thereof of unselected and unallotted lands in the Choctaw and Chickasaw nations, respectively.

Sixteenth. Whether the order issued by the Honorable Ethan Allen Hitchcock, Secretary of the Interior, under date of December eighth, nineteen hundred and six, directing the Commission to suspend "all selections and the issuance of patents" to certain timber lands in the Choctaw and Chickasaw nations, has been rescinded in whole or in part.

The following report was made thereon by the Department:

DEPARTMENT OF THE INTERIOR,
Washington, February 26, 1908.

Hon. MOSES E. CLAPP,
Chairman of Committee on Indian Affairs, United States Senate.

SIR: On January 28, 1908, the Department forwarded to the Commissioner to the Five Civilized Tribes copy of Senate resolution No. 69, calling for certain information and records relating to the enrollment of citizens of the Choctaw and Chickasaw nations.

The Department has received report of the 10th instant from J. G. Wright, Commissioner to the Five Civilized Tribes, covering all paragraphs of the resolution except Nos. 1, 4, 6, and 8, which have been covered by separate report from the Department.

On pages 3, 4, and 5 of Commissioner Wright's report information is given relating to various rolls and schedules of Choctaw citizens and freedmen, and the names of counties to which each roll or schedule refers are given, but nowhere in the report is there furnished a complete list of the tribal counties of the Choctaw Nation.

The Department believes that the following list covers all the tribal counties: Atoka, Blue, Boktukle, Cedar, Eagle, Gaines, Jacks Fork, Jackson, Kiamitia, Nashoba, Red River, Sans Bois, Skullyville, Sugar Loaf, Tobuckay, Towson, and Wade.

By comparison of the information concerning the 1885 roll it will be seen that it does not contain the names of citizens located in Jackson County. The 1893 roll covers all the counties. The memorandum rolls of citizens by blood used in the compilation of the census roll of 1896 do not contain the names of the Indians in Gaines, Nashoba, Sans Bois, Tobucksy, or Wade counties. The memorandum rolls of the intermarried whites do not contain the names of the intermarried citizens in Cedar, Gaines, or Sans Bois counties. The memorandum rolls of freedmen fail to contain the names of those located in Atoka, Blue, Cedar, Gaines, Jacks Fork, Nashoba, Sans Bois, Sugar Loaf, or Tobucksy counties.

Commissioner Wright's report was made with reference to the period from 1880 to 1900, although the call of the Senate covers the period from 1830 to 1890, but he did give information concerning the Chickasaw roll of 1878. However,

it is the roll of 1878. The Commission, and its successor, the Commissioner, had no rolls antedating the year 1880.

Very respectfully,

FRANK PIERCE,
Acting Secretary.

DEPARTMENT OF THE INTERIOR,
Washington, February 21, 1908.

Hon. MOSES E. CLAPP,
Chairman of Committee on Indian Affairs, United States Senate.

SIR: The Department has had under consideration Senate resolution No. 69, submitted by you on January 24, 1908. You ask for report thereon, including any explanatory matters that may be deemed advisable.

A copy of the resolution has been forwarded to the Commissioner to the Five Civilized Tribes at Muskogee, Okla., with instructions to report on such of the paragraphs thereof as more particularly relate to the work of the Commissioner, and when response is received from him full report will be made by the Department covering the information furnished by him and that which is requested from the records of the Department. However, I take this opportunity of reporting in advance regarding paragraphs I, IV, VI, and VIII of the resolution.

The rolls of Choctaw Indians, or schedules of such Indians, in effect and having the force of rolls that are in the possession of the Department are as follows:

(1) Register of Choctaw Indians claiming lands under the various provisions of the Choctaw treaty of 1830 and the supplement thereto, prepared by F. W. Armstrong in 1831. This register has been printed and is generally known as "Armstrong's Register." It appears in Volume VII (public Lands), American State Papers, pages 38 to 122, inclusive, making an aggregate of 85 pages. If printed in brevier type on pages of the size of ordinary Government reports of the present day it would make the same number of pages.

(2) In 1831, after the Choctaw lands had been surveyed, George W. Martin was sent to the ceded Choctaw country in Mississippi to make a record of those Choctaws who claimed land under the treaty and supplement, and of the description by Government survey of the lands claimed. He was engaged in this business until the year 1836, and his report is generally known as "Martin's Register." It also has been printed by the Government, and consists of 43 pages of the usual size of Government reports, printed in brevier type.

(3) Immediately after the ratification of the treaty of 1830 the Choctaw Indians began to complain that the agent had refused to make record of the desire of many of their number to remain east of the Mississippi and reap the benefits of the fourteenth article of that treaty. The proofs submitted to the War Department regarding the allegations of misconduct on the part of the agent were so convincing that Congress passed an act, approved March 3, 1837 (5 Stat. L. 180), providing for the appointment of commissioners to adjust the claims to land under the fourteenth article of the treaty. The time for which these commissioners were appointed having expired before the work was completed, Congress passed a further act, approved August 23, 1842 (5 Stat. L., 513), providing for the satisfaction of the claims arising under the fourteenth and nineteenth articles of the Choctaw treaty. Both of these acts provided for the issuance of scrip in lieu of the land which the Indians had lost in consequence of the misconduct of the agent or through other causes over which they had no control. Reports of these commissions were forwarded at different times and acted on by the Department, on the basis of which action scrip was issued. The records concerning the cases tried by the commissions have been printed and comprise 248 pages of Government report size, printed in brevier type.

(4) The general emigration of the Choctaws under the treaty was begun in 1831 and ended early in 1833. However, as years went on, Congress appropriated funds for the removal of those remaining east, and the emigration of the Indians was almost constantly in process until January, 1855, when it was discontinued. The records of the Indians transported west by the Government during all these years are in the Indian Office and consist of 161 written pages, which it is estimated would make 53 printed pages of the size above mentioned.

(5) Only half the scrip to which the Indians were entitled was delivered to them. Some of it was delivered west of the Mississippi and some east. The schedules showing these deliveries contain important genealogical infor-

mation, and for that reason the printing would be desirable in connection with the other schedules. However, very little credit can be given to the schedule compiled by J. H. Bowman, who delivered the scrip east of the Mississippi River, because he was charged with various frauds in its delivery, and the information contained in the departmental records is of such a character as to justify the strong suspicion that he allowed white men who desired to secure the scrip to bring before him Indians who impersonated the real owners and secured the certificates. These schedules consist of 135 pages, which, if printed in brevier, would probably make 45 pages.

(6) In 1855 Douglas H. Cooper, the agent of the Choctaws west, was directed to go to the Choctaw country in Mississippi, Louisiana, and Alabama and make a census of those members of the tribe still remaining in those States. Mr. Cooper visited the Choctaw country and made a roll, but from what the Indian Office has learned since concerning these Indians it is evident that his roll was very incomplete. However, it is good for what it contains. If printed, it would make not to exceed 3 pages.

(7) In 1856 the tribal authorities of the Choctaw Nation presented schedules of claims made by individual citizens of the nation for the expense of self-emigration and for losses of property incident to the removal. These schedules consist of 113 pages and if printed in brevier would probably make 37 pages.

The rolls of Chickasaws are as follows:

(1) The emigration muster rolls, compiled in 1837 by A. M. M. Upshaw, consisting of 35 pages, which if printed would make probably 12 pages.

(2) The census made in 1839 by A. M. M. Upshaw, consisting of 45 pages, which if printed in brevier would make probably 15 pages.

(3) Book No. 13, covering reservation claims of the heads of Chickasaw families, consisting of 147 pages, which if printed in brevier would make probably 49 pages.

Copies of the papers covered by Paragraphs IV, VI, and VIII are inclosed.

Respectfully,

JAMES RUDOLPH GARFIELD,
Secretary.

DEPARTMENT OF THE INTERIOR,
COMMISSIONER TO THE FIVE CIVILIZED TRIBES,
Muskogee, Okla., February 10, 1908.

The COMMISSIONER OF INDIAN AFFAIRS.

SIR: Receipt is hereby acknowledged of Indian Office letter of January 28, 1908, inclosing a copy of Senate resolution No. 69 (60th Cong., 1st sess.), calling on the Secretary of the Interior for certain information and records relating to the enrollment of citizens of the Choctaw and Chickasaw nations. The call is divided under sixteen heads, and the most of these items relate to records in the possession of this office and business transacted by the Commission to the Five Civilized Tribes, and it is stated that it will, therefore, be necessary that this office respond to all parts of the call except paragraphs numbered 1, 4, 6, and 8.

In giving the list of the rolls that are in the possession of this office that were used by the Commission and the Commissioner to the Five Civilized Tribes in enrolling citizens and freedmen of the Choctaw and Chickasaw nations, it is desired that there be given a complete description of each roll, including the size of the page, the number of names or lines on each page, and the number of pages, together with an estimate of the number of pages it would make if printed in brevier.

Inasmuch as it is necessary that this information be furnished at as early a date as possible, this office is requested to make it special.

In compliance with the above instructions, I have the honor to submit the following report with reference to the several items embodied in Senate resolution No. 69, to which this office is directed to respond:

"II. A list of the rolls of Choctaw and Chickasaw Indians prepared by the officials, representatives, agents, or individual members of the Choctaw and Chickasaw nations from eighteen hundred and eighty to nineteen hundred, inclusive, and now in the custody and possession of the Department or any bureau, division, or commission thereof or thereunder; the designation of each roll and by whom and in what year or years each of said rolls was prepared, and the purpose for which each of said rolls was prepared."

There are now in the custody and the possession of the Commissioner to the Five Civilized Tribes the following rolls and memoranda of rolls which

appear to have been prepared by the officials, representatives, agents, or individual members of the Choctaw and Chickasaw nations, from 1880 to 1900, inclusive:

CHOCTAW NATION.

The 1885 census rolls for the counties of Wade, Towson, Sugar Loaf, Eagle, Tobucksy, Blue, Sans Bois, Boktuklo, Jacks Fork, Cedar, Skullyville, Gaines, Nashoba, Red River, Kiamitia, and Atoka. The pages of these rolls are 8 by 14 inches in size, 30 lines to a page, and the rolls contain, in all, a total of 572 pages, upon which are listed the names of Indians, whites, and freedmen. The purpose for which they were prepared is not known by this office.

The 1893 census rolls for the counties of Jackson, Eagle, Tobucksy, Sugar Loaf, Towson, Wade, Cedar, Skullyville, Jacks Fork, Boktuklo, Sans Bois, Kiamitia, Blue, Atoka, Red River, Nashoba, and Gaines, and also a list of those Choctaws residing in the Chickasaw district. The pages of these rolls are 8 by 14 inches in size, 15 lines to a page, and the rolls contain, in all, a total of 1,627 pages, upon which are listed the names of Indians. These rolls were prepared for the purpose of making the leased district payment.

The 1896 census roll (No. 1) for all the tribal counties of the Choctaw Nation, arranged alphabetically. This roll contains 480 pages, 14 by 20 inches in size, 50 lines to a page, and there are listed in this roll the names of 18,953 Indians, whites, and freedmen. This roll was prepared for the purpose of complying with the act of Congress approved June 10, 1896. (29 Stat. L., 321.)

The 1896 census roll (No. 2). This roll is practically a duplicate of the above roll, and was not furnished this office as an official roll.

Memoradum rolls, from which the 1896 census rolls were prepared, as follows:

List of the Indians for the following counties: Skullyville, Atoka, Jacks Fork, Red River, Kiamitia, Towson, Sugar Loaf, Cedar, Jackson, Eagle, Boktuklo, Blue, and those Chickasaws residing in the Choctaw Nation. List of whites for the following counties: Jackson, Kiamitia, Tobucksy, Jacks Fork, Skullyville, Blue, Wade, Boktuklo, Sugar Loaf, Eagle, Nashoba, Atoka, Red River, Towson, and those Chickasaws residing in the Choctaw Nation. List of freedmen for the following counties: Eagle, Skullyville, Kiamitia, Red River, Boktuklo, Wade, Jackson, and Towson.

The pages of these memorandum rolls are 7 by 12 inches in size and contain 1,021 pages, upon which are listed the names of 12,489 Indians, whites, and freedmen.

CHICKASAW NATION.

The 1893 Chickasaw pay roll (No. 1), in which the names are not listed by counties, the pages of which are 8 by 12 inches in size, 37 lines to a page, and the names of Indians and whites appear upon 141 pages of this roll. This roll was prepared for the purpose of making the leased-district payment.

The 1893 Chickasaw pay roll (No. 2), in which the names are not listed by counties, the pages of which are 8 by 14 inches in size, 40 lines to a page, and the names of Indians and whites appear upon 228 pages of this roll. This roll was prepared for the purpose of making the leased-district payment.

The 1893 Chickasaw Maytubby roll (No. 1), which is a manuscript roll and in which the names are not listed by counties, the pages of which are 8 by 12 inches in size, 26 lines to a page, and the names of Indians and whites appear upon 416 pages of this roll. This is a roll of Indians and whites of the Chickasaw Nation residing in the Choctaw Nation who received the 1893 leased-district payment to the Chickasaws.

The 1893 Chickasaw Maytubby roll (No. 2), which is a manuscript roll and in which the names are not listed by counties, the pages of which are 8 by 12 inches, 22 lines to a page, and the names of Indians and whites appear upon 5 pages of this roll. This is a roll of Indians and whites of the Chickasaw Nation residing in the Choctaw Nation who received the 1893 leased-district payment to the Chickasaws.

The 1896 Ieshatubby roll, which is a manuscript roll and in which the names are not listed by counties, the pages of which are 8 by 12 inches in size, 22 lines to the page, and the names of Indians and whites appear upon 5 pages of this roll. This is a roll of Indians and whites of the Chickasaw Nation residing in the Choctaw Nation who received the 1893 leased-district payment to Chickasaws.

The 1896 census roll for the counties of Panola, Pickens, Tishomingo, and Pontotoc, and of those Chicasaws residing in the first, second, and third districts of the Choctaw Nation. The pages of this roll are 8 by 12 inches in size

and contain, in all, 97 pages, upon which are listed the names of 5,820 Indians and whites. This roll was made for the purpose of complying with the act of Congress approved June 10, 1896 (29 Stat. L., 321).

Memorandum roll for the counties of Panola, Pontotoc, Tishomingo, and Pickens, and of those Chickasaws residing in the first and second districts of the Choctaw Nation. The pages of this roll are 14 by 17 inches in size, 40 lines to a page, and the names of Indians and whites are listed upon 123 pages of this roll. This memorandum roll was used by the officials or representatives of the Chickasaw Nation in preparing the 1896 census roll.

FREEDMEN.

In addition to the above rolls of the Choctaw and Chickasaw nations there has been furnished this office a freedmen roll of three volumes (one volume each for the first, second, and third districts of the Choctaw Nation) of those freedmen who, in the year 1885, elected to receive the $100 payment and remove from the Choctaw Nation. The pages of each volume are 8 by 14 inches in size, and the three volumes contain, in all, 105 names.

One volume for the first, second, and third districts of the Choctaw Nation, entitled "Freedmen Registration, Admitted," the pages of which are 8 by 14 inches in size, 34 lines to a page, and contain, in all, a total of 251 pages, upon which are listed the names of freedmen. None of these three lists is certified to, nor is there any date showing when said lists were compiled, but it is believed that they were prepared in the year 1885, the date when the lists of freedmen who elected to receive the $100 payment and remove from the Choctaw Nation were prepared.

In addition to the rolls enumerated above there have been furnished this office, at various times, a number of miscellaneous rolls, lists, and papers upon which appear names of Indians, whites, and freedmen, but it is not shown that they were prepared between the years 1880 and 1900, inclusive.

The matter of furnishing an estimate of the number of pages, printed in brevier and of the same size as the page of a Government report, required to make a printed copy of all rolls and memoranda of rolls, and the cost thereof, will be discussed at the conclusion of this report.

"III. Which of said rolls were in the custody and possession of the Commission to the Five Civilized Tribes and were used by said Commission in the preparation of the 'final citizenship rolls' of the Choctaw and Chickasaw nations."

The following rolls were in the custody and possession of the Commission to the Five Civilized Tribes and were used by this office in the preparation of the final rolls of the Choctaw and Chickasaw nations, being the only rolls that were considered as official:

CHOCTAW NATION.

1885 census roll.
1893 leased district payment roll.
1896 census roll.

CHICKASAW NATION.

1878 annuity roll.
1893 leased district payment roll (Nos. 1 and 2).
Maytubby roll (Nos. 1 and 2).
Ieshatubby roll of Chickasaws residing in Choctaw Nation who drew the leased district money as Chickasaws.
1896 census roll.

No rolls of Chickasaw freedmen have ever been furnished the Commission or the Commissioner to the Five Civilized Tribes, and this office has always been advised that no rolls of the Chickasaw freedmen have ever been made under the direction of the Chickasaw tribal authorities.

The 1896 census roll of Choctaw freedmen was used in connection with the enrollment of Choctaw freedmen, but all freedmen who established that they were, at any time, slaves of a Choctaw or Chickasaw Indian or descendants of such slaves were enrolled without reference to the question of whether or not their names appeared on any rolls.

"V. A copy of the report of the Commission to the Five Civilized Tribes, under date of January twenty-fourth, nineteen hundred and three, in the case of Bettie Lewis, respecting the authenticity and the reliability of the rolls therein referred to, and which report is particularly referred to in the decision

of the Assistant Attorney-General in the case of Mary Elizabeth Martin, rendered March twenty-fourth, nineteen hundred and five."

The following is a copy, in full, of the above report:

"MUSKOGEE, IND. T., *January 24, 1903.*

"The SECRETARY OF THE INTERIOR.

"SIR: Receipt is hereby acknowledged of departmental communication of December 27, 1902 (I. T. D., 4703–1902 and 6496–1902), requesting attention to departmental letter of October 23, 1902, relative to the application of Bettie Lewis for enrollment as a citizen of the Choctaw Nation.

"The matter was first brought to the attention of the Department in the decision of the Commission under date of July 23, 1902, refusing the application made by Bettie Lewis for enrollment as a citizen by blood of the Choctaw Nation. In her testimony before the Commission at Atoka, Ind. T., June 7, 1900, Bettie Lewis stated that her father, Butler McGee, who had then been dead about fifteen years, was, during his lifetime, a recognized citizen by blood of the Choctaw Nation and a resident of Jacks Fork County.

"On August 12, 1902, the Department, upon the recommendation of the Acting Commissioner of Indian Affairs of August 2, 1902, requested the Commission to report whether the name of Butler McGee, the alleged father of Bettie Lewis, is found on any of the tribal rolls of the Choctaw Nation.

"In reply thereto the Commission, on August 28, 1902, advised the Department 'that the enrollment of the citizens of the Choctaw and Chickasaw nations, as now being made by this Commission, is upon the identification of the applicants from the 1893 leased district payment roll of the Choctaw and Chickasaw nations and the 1896 census roll of citizens of these two tribes,' and, further, 'no authenticated rolls of the citizens of the Choctaw and Chickasaw tribes have ever been furnished the Commission as a basis of enrollment, nor have any roll or rolls of the citizens of these two tribes ever been adopted or confirmed by the national council of the Choctaw Nation or the legislature of the Chickasaw Nation as authenticated rolls of citizenship,' and further, 'the Commission has not in its possession, nor has it any knowledge of any rolls of the citizens of the Choctaw and Chickasaw nations made during or prior to the year 1885,' and further, 'the request has heretofore on several occasions been made to the tribal authorities of the Choctaw and Chickasaw nations to furnish the Commission with any and all rolls and records of citizenship in the possession of the two tribes, but we have never been furnished with any roll or rolls of the citizens made prior to the leased district payment roll of 1893.'

"In reporting on the communication of the Commission of August 28, 1902, the Acting Commissioner of Indian Affairs, under date of October 21, 1902 (Land 51962–1902), after referring to acts of the national council of the Choctaw Nation and of the Chickasaw legislature, authorizing the preparation of rolls of citizenship, expresses the opinion that such tribal legislation clearly shows that 'there were censuses prepared and regular rolls of citizenship kept, and that the enrollment of citizens was one of the important functions of government in the Choctaw and Chickasaw nations for many years; that this being true, there must be numerous rolls of the citizens of the two tribes antedating the 1893 leased district payment roll of these two tribes.'

"The Acting Commissioner of Indian Affairs further expresses the opinion that the Commission should be instructed to again call upon the executives of the Choctaw and Chickasaw nations for such rolls made prior to 1893, and in case of failure upon their part to appeal to the United States court, in accordance with the provision of the act of Congress of June 28, 1898.

"In concluding the Acting Commissioner of Indian Affairs states as follows:

"This Office has examined and reported on a large number of cases of applicants for enrollment as citizens by blood of the Choctaw and Chickasaw nations and recommended that the applicants be rejected for enrollment on the presumption that statements by the Commission in those cases, of the general character of the statements in the two cases referred to herein, involved an exhaustive examination of the rolls of those two nations, and is now surprised and disappointed to learn that it was misled into believing that the examination had been thorough and complete. In other words, these recommendations and the action of the Department thereon were based on false premises, and many of the conclusions reached may have been consequently erroneous.

"'This Office, in the light of the circumstances persented, recommends that the Bettie Lewis case, and all other rejected applications for citizenship in the Choctaw and Chickasaw nations be held for further consideration until the

Commission is in a position to make a more thorough examination with reference to what the Choctaw and Chickasaw rolls actually do show.'

"This report of the Acting Commissioner of Indian Affairs was transmitted by the Department for consideration, report, and recommendation on October 23, 1902 (I. T. D., 6496-1902).

"The Commission has to report that from the inception of the work of the enrollment of the citizens of the Choctaw and Chickasaw nations every possible effort has been made to obtain from the tribal authorities of these two nations any rolls of citizenship that they might have in their possession. The first step taken in this direction was after the approval of the act of Congress on June 10, 1896, when request was made of the principal chief of the Choctaw Nation and the governor of the Chickasaw Nation to furnish the Commission the last authenticated roll of citizens of these two tribes made prior to June 10, 1896, and all other rolls made subsequent thereto, with such copies of the acts of legislature and the national council of the two nations, the judgments of citizenship courts or Commission as may have been rendered since the date of the last authenticated rolls, admitting persons to citizenship in the Choctaw and Chickasaw nations, and such other records and documents as might be in any manner helpful to the commission in making rolls of the citizens of the two nations in accordance with the acts of Congress of June 10, 1896, and June 7, 1897.

"This request was made of the chief executive of the two tribes in communications under date of June 28, 1897. In reply thereto the principal chief of the Choctaw Nation, under date of July 10, 1897, advised the Commission:

"'It is absolutely impracticable for me to furnish a complete roll of the Choctaws, together with all persons admitted after June 10, 1896. I think, however, that I can furnish your Commission names of some parties that were fraudulently admitted, provided that you will extend my time for this work—say, about twenty days from the 2d of August.'

"The principal chief of the Choctaw Nation, on July 17, 1897, in reference to the rolls, advised this Commission as follows:

"'It will be impossible for me to furnish your Commission with the last authenticated roll made prior to June 10, 1896, as the time to prepare the roll is too brief. But the last revised roll made in accordance with the act of council (October, 1896) contains all the citizens of the Choctaws by blood, intermarriage, and adoption, and is about complete after about four months of labor, and will be furnished you at the time requested. I will add, however, that the law authorizing this last roll provided that the principal chief shall approve of and sign the roll before it becomes the recognized rolls of the citizens of the Choctaw. But I am satisfied that there are some names on the roll that have been registered through fraud or misrepresentation; I shall not approve of it until these cases are investigated. At the proper time I will furnish you a list of these names and of the witnesses.'

"On July 30, 1897, the principal chief advised the Commission of the forwarding by express of the revised roll of the Choctaw Nation containing the names of the citizens by blood, marriage, or adoption, and in this connection states as follows:

"'The law requiring the taking of the roll required it to be approved by the principal chief, but as there are names on the roll that I am satisfied ought not to be there, I will not approve of the rolls until these cases are investigated. I will furnish you in a few days all the evidence I can bearing on these cases.'

"Under date of August 13, 1897, the Commission addressed a communication to the principal chief of the Choctaw Nation, requesting that he 'inform us the date of your last authenticated roll approved by your national council prior to June 10, 1896, which includes the names of intermarried citizens as well as citizens by blood. It will be necessary for us to have that roll and every other roll made since that time to enable us to comply with the law under which we are to make rolls.'

"In reply to this communication, on August 17, 1897, the principal chief of the Choctaw Nation advised the Commission as follows:

"'I wish to inform you that there was no roll of intermarried citizens made prior to June, 1896.

"'The revised rolls which I recently furnished your Commission is the only roll made by this nation that contains the names of intermarried citizens.'

"The governor of the Chickasaw Nation, on July 22, 1897, in reply to our request of June 28, 1897, advised the Commission as follows:

"'We have only one authenticated roll of citizens, and that is the one approved by the legislature in 1896.'

"And on December 27, 1897, the governor of the Chickasaw Nation advised the Commission that he had that day forwarded a

"'true copy of the roll of our people; the best we can do under present circumstances. Any information you may wish in regard to same will be gladly given, if within my power to do so.'

"The correspondence had with the chief executives of the two tribes above referred to shows clearly that there had never, prior to the approval of the act of Congress of June 10, 1896, been any rolls of the citizens of the Choctaw and Chickasaw nations which had been ratified and confirmed by the legislative bodies of these two nations or had received the approval of the chief executives. It is a matter of general information in said nations that the rolls made prior to that time were merely census rolls made up separately according to counties and districts by individual census takers in such counties and districts, and which were never brought together or consolidated so as to form a complete roll of tribal members.

"The rolls made under the provisions of the act of Congress of June 10, 1896, by the tribal authorities, have never received the confirmation of the legislative bodies of the two nations nor the approval of the chief executives; so that at the inception of the work of the enrollment of the citizens of these two nations the Commission was only furnished with the two rolls above referred to and made under the provisions of the act of Congress of June 10, 1896, and which, the Commission was informed, contained inaccuracies. In 1898, after the approval of the act of Congress of June 28, 1898, authorizing the Commission to make correct rolls for the citizens of these two tribes, an earnest effort was made to secure from the tribal authorities of these two nations all rolls of citizenship and other papers, documents, and acts of admission of any description that might in any manner assist the Commission in the preparation of correct rolls of the citizens of the two tribes and to determine whether any such rolls, documents, or acts were in existence, and if so, where located.

"In the fall of 1898, when the Commission began the work of enrollment in the Choctaw and Chickasaw nations, Commissioners Bixby and McKennon, who were both in the field, conducted an investigation looking to the location and acquirement of tribal rolls and records. As a result of their personal efforts the Commission secured the Choctaw leased district payment roll of 1893 and the Chickasaw pay roll of 1893. In addition to these two payment rolls they also obtained what are known as the Ieshatubby and Maytubby rolls of 1893, these rolls being memoranda made by Commissioners Ieshatubby and Maytubby in 1893 of those Chickasaw Indians who were residing in the Choctaw Nation. All of the rolls so obtained by Commissioners Bixby and McKennon were procured from individuals who had said rolls in their possession, and the information which the Commissioners obtained at that time lead to the conclusion that it had been the practice of tribal officials charged with any duty in connection with tribal rolls to withdraw them from the executive offices when necessary and to retain them among their personal effects.

"The rolls above referred to were the only rolls of which the Commission could gain any knowledge. Having been repeatedly informed by representatives of both tribes that no tribal rolls of any description were in the executive offices, and being thoroughly satisfied that the tribal officials were sincerely endeavoring to aid the Commission in locating the missing rolls, there appeared to be no foundation upon which to obtain an order of the court.

"After the receipt of departmental communication of October 23, 1902, the Commission at once addressed communications to the governer of the Chickasaw Nation and the principal chief of the Choctaw Nation, with which, for their information, were inclosed copies of the report of the Acting Commissioner of Indian Affairs of October 21, 1902. In these communications the Commission earnestly requested the chief executives of the two tribes that there be transmitted at the earliest practicable date all the rolls of the citizens of the two tribes in the possession of the tribal authorities made prior to the leased district payment roll of 1893, and such other data as would be of benefit to the Commission in determining the rights of persons to be enrolled as citizens of these two nations.

"No reply has ever been received by the Commission to the letter addressed to the governor of the Chickasaw Nation, but under date of November 8, 1902, the principal chief of the Choctaw Nation, in reply to our request, stated as follows:

"'In reply I have to say that I have this day written Hon. E. H. Wilson, national secretary of the Choctaw Nation, directing him to be at Tuskahoma on Monday, the 17th instant, for the purpose of making a thorough search among

the records of the national secretary's office to ascertain if such census or records of citizens of the Choctaw Nation, as suggested in the letter of the honorable Secretary of the Interior, can be found.

"'It will require much time to go through the accumulated mass of ill-arranged papers in that office, and would suggest that you send a representative there to cooperate with the national secretary in the search.

"'I am certainly interested in securing all the data bearing on the citizenship cases that can be obtained and will lend every assistance in that direction.'

"In accordance with the suggestion of the principal chief of the Choctaw Nation, the Commission directed one of its representatives to proceed to Tuskahoma on the 17th of November for the purpose, in conjunction with the national secretary of the Choctaw Nation, of making a thorough search of the records of the national secretary's office for data bearing upon the rolls of citizenship of the Choctaw Nation.

"Another representative of the Commission was directed to proceed to Tishomingo, the national capital of the Chickasaw Nation, for the purpose of securing such records as he might find in the national secretary's office of that nation bearing upon the rights of persons to citizenship in the Chickasaw Nation.

"The result of this investigation in the Chickasaw Nation has been the securing of portions of the 1878 annuity roll of said nation, together with several lists, undated, which apparently contain the names of both citizens and non-citizens. So much of the 1878 annuity roll as was obtained is now being arranged and indexed.

"The representative of the Commission delegated to Tuskahomma secured a large number of incomplete lists of persons, undated and without any caption, and it is impossible, from the condition in which the records were found, to definitely state whether such lists were the rolls of the citizens of the Choctaw Nation.

"Both of the representatives of the Commission delegated for this purpose spent several days in the office of the national secretaries of the two tribes and used every available means of securing any documents that might in any way materially assist the Commission in the determination of the rights of the persons to be enrolled as citizens of the two tribes.

"After these investigations and the return of our representatives to the general office, the Commission was in receipt of a letter, under date of December 15, 1902, from Edward H. Wilson, the national secretary of the Choctaw Nation, as follows:

"'Very much to my surprise, as well as pleasure, I found a complete set of the Choctaw census rolls, compiled in 1885. These rolls were found in a most inaccessible place, and were discovered by accident. I forwarded same by to-day's express, and hope you will acknowledge receipt in due time.'

"The rolls referred to in the above communication were received by the Commission and are found to be in excellent condition, being separate bound rolls of each county in the Choctaw Nation, certified by the duly and lawfully appointed census enumerator to be a true census of the county, and bearing the certificate of the national secretary of the Choctaw Nation, showing the date the same were filed for record in his office.

"These rolls, containing the names of probably between 12,000 and 14,000 citizens of the Choctaw Nation, are now being indexed by the Commission and this work will presumably be completed within a very short time.

"The Commission believes, as a result of this thorough investigation in this matter, that the only rolls secured which can in any manner be referred to or relied upon as even incomplete rolls of the citizens of these two nations are the 1885 census roll of the Choctaw Nation and the 1878 annuity roll of the citizens of the Chickasaw Nation.

"It is impracticable at this time to determine and advise whether or not the name of Butler McGee, the alleged father of the applicant, Bettie Lewis, in the case under consideration, is found upon the 1885 census roll of the Choctaw Nation, but as soon as the index now being prepared is completed the Commission will report on the inquiry made in departmental letter of August 12, 1902.

"In referring to those cases wherein the Department has affirmed the decision of the Commission refusing the application of persons therein for enrollment as citizens of the Choctaw and Chickasaw nations, the Commission believes that in none of these cases will it be found that the applicants, or their parents, ever obtained any tribal recognition as citizens of these two tribes, and that the greater number of applications were made by the persons in the belief

that the possession of Indian blood was the only requisite to their recognition and enrollment as citizens of these two nations. In those cases already affirmed by the Department, however, the Commission will make an investigation of such rolls and papers as have recently come into its possession and will make report to the Department in all cases in which it is found that the names of the applicants or their ancestors appear thereon.

"The Commission has further to report that in the cases which are now, and in the future will be, forwarded to the Department, the statements as to tribal recognition will include in the Choctaw Nation an examination of the 1885 census roll, the 1893 leased-district payment roll, and the 1896 census roll; and in the Chickasaw Nation the partial 1878 annuity roll, the 1893 leased-district payment roll, and the 1896 census roll, the only rolls which the Commission has been able to secure after a thorough and most painstaking investigation of this matter.

"Respectfully,

"TAMS BIXBY,
"*Acting Chairman.*
"T. B. NEEDLES,
"*Commissioner.*
"C. R. BRECKINRIDGE,
"*Commissioner.*"

(Through the Commissioner of Indian Affairs.)

"VII. Whether the records of the Department and the Commissioner to the Five Civilized Tribes show that any person whose name appears on any tribal roll of the Choctaw and Chickasaw tribes, or his or her descendants, have been denied enrollment on the 'final citizenship rolls' of said tribes and denied the right to share in the tribal property, and approximately how many have been so denied."

CHOCTAWS.

The records of the Commissioner to the Five Civilized Tribes show that of the persons whose enrollment as citizens of the Choctaw Nation has been denied, the names of 675 have been found upon the official rolls (see Item III) of said nation or are the minor descendants of the persons so enrolled.

Of this number 130 whose enrollment had been granted by the Commissioner were disapproved by the Department in accordance with an opinion of the Attorney-General of the United States of February 19, 1907, and the names of 203 whose enrollment had already been approved were canceled by the Department under the same opinion.

The applications that were made for the enrollment of 150 of the 675 referred to above as being denied, were dismissed during the months of January, February, and up to March 4, 1907, for the reason that no information as to their whereabouts could be obtained from representative citizens of the tribe or through field parties operating in the nation, and, as no personal applications had been made by such persons, it was believed that they were dead or had removed from the Indian Territory.

CHICKASAWS.

The records of the Commissioner to the Five Civilized Tribes show that of the persons whose enrollment as citizens of the Chickasaw Nation had been denied the names of 87 have been found upon the official rolls of the Chickasaw Nation, or are the minor descendants of persons so enrolled.

Of this number, 19 whose enrollment had been approved were canceled by the Department under an opinion of the Attorney-General of the United States of February 19, 1907, and the applications that were made for the enrollment of 50 persons were dismissed during the months of January, February, and up to March 4, 1907, for the reason that no information as to their whereabouts could be obtained from representative citizens of the tribe or from field parties operating in that nation, and, as no personal applications had been made by such persons, it was believed that they were either dead or had removed from the Indian Territory.

CHOCTAW FREEDMEN.

The records of the Commissioner to the Five Civilized Tribes show that the names of 65 persons, whose enrollment had been denied, appear upon the roll

of Choctaw freedmen furnished by the Choctaw Nation, or are the minor descendants of persons so enrolled.

It is impossible to ascertain from the records of this office the descendants of persons whose names appear upon the tribal rolls of the Choctaw and Chickasaw nations, other than minor descendants who are enrolled with them upon such rolls.

The names of all applicants for enrollment were checked with the rolls of the Choctaw and Chickasaw nations, which were considered official, as named in Item III, before decisions were rendered, and their names have again been checked with these rolls in the preparation of this data.

The memorandum rolls, hereinbefore referred to, from which the census rolls were made, and all other parts of rolls in the possession of this office contain many names which have been lined out with ink or pencil, names interlined in pencil or with ink of a different kind from that used in the preparation of the rolls, and no information could ever be secured from the tribal officials tending to show by whom or under what authority such corrections and interlineations were made.

No rolls were ever approved by the Choctaw and Chickasaw tribal authorities, as in the case of the 1890 authenticated Creek roll or the 1880 authenticated Cherokee roll, and this office has continuously received protests from the Choctaw and Chickasaw nations against the enrollment of persons whose names were alleged to have been placed on the rolls through fraud or without authority of law.

A special effort is now being made to check the names of applicants with the memorandum rolls, above referred to, but, owing to the difficulties already described, which are attendant upon this work, and the fact that none of these books are indexed, this work will consume considerable time, and, inasmuch as an early report was requested, the information already secured is forwarded. If a further report is required, this office will then be better able to furnish same.

"IX. A copy of the notice issued by the Commission to the Five Civilized Tribes under the act approved June twenty-eighth, eighteen hundred and ninety-eight, directing all persons claiming any rights in the Choctaw and Chickasaw nations to appear before said Commission at certain specified places and times for examination and identification."

The following is a copy of the notice issued in the year 1898:

DAWES COMMISSION.

CENSUS NOTICE.

CHICKASAW NATION.

The Dawes Commission will be at the places, on the dates named below, for the purpose of taking a census of the Chiskasaw Indians by blood and Chickasaw freedmen.

Heads of families may enroll the members of their families and minor children who made their homes with them. Guardians may enroll their wards.

Stonewall, September 1, 2, 3, 5, 6, 7, and 8.
Pauls Valley, September 12, 13, 14, 15, and 16.
Ardmore, September 19, 20, 21, 22, and 23.
Tishomingo, September 26, 27, 28, 29, and 30.
Lebanon, October 3, 4, 5, 6, and 7.
Colbert, October 10, 11, 12, 13, and 14.

This work is done preparatory to making final rolls of Chickasaw citizens and freedmen under the provisions of the recent act of Congress, viz:

"* * * Said Commission is authorized and directed to make correct rolls of citizens by blood of all the * * * tribes, eliminating from the tribal rolls such names as may have been placed thereon by fraud or without authority of law, enrolling such only as may have lawful right thereto, and their descendants born since such rolls were made. * * * No person shall be enrolled who has not heretofore removed to and in good faith settled in the nation in which he claims citizenship. * * * Said Commission shall make such rolls descriptive of the persons thereon, so that they may be thereby identified, and it is authorized to take a census of each of said tribes, or to adopt any other means by them deemed necessary to enable them to make such rolls. They shall have access to all rolls and records of the several tribes, and the United States court in Indian Territory shall have jurisdiction to compel the

officers of the tribal governments, and custodians of such rolls and records, to deliver same to said Commission, and on their refusal or failure to do so, to punish them as for contempt; as also to require all citizens of said tribes, and persons who should be enrolled, to appear before said Commission for enrollment at such times and places as may be fixed by said Commission, and to enforce obedience of all others concerned, so far as the same may be necessary, to enable said Commission to make rolls as herein required, and to punish anyone who may in any manner or by any means obstruct this work.

* * * * * * *

"It shall make a correct roll of Chickasaw freedmen entitled to any rights or benefits under the treaty made in eighteen hundred and sixty-six between the United States and the Choctaw and Chickasaw tribes, and their descendants born to them since the date of said treaty.

"No person shall be enrolled who has not heretofore removed to and in good faith settled in the nation in which he claims citizenship.

* * * * * * *

"The rolls so made, when approved by the Secretary of the Interior, shall be final, and the persons whose names are found thereon, with their descendants thereafter born to them, with such persons as may intermarry according to tribal laws * * * shall alone constitute the several tribes which they represent.

"The members of said Commission shall, in performing all the duties required of them by law, have authority to administer oaths, examine witnesses, and send for persons and papers; and any person who shall willfully and knowingly make any false affidavit or oath to any material fact or matter before any member of said Commission, or before any other officer authorized to administer oaths, to any affidavit or other paper, to be filed, or oath taken, before said Commission, shall be deemed guilty of perjury, and on conviction thereof shall be punished as for such offense."

Persons claiming rights as Chickasaw freedmen will be examined orally, under oath, by members of the Commission, and if additional evidence be deemed necessary in any case witnesses will in like manner be examined, and the rights of claimants thereupon determined by the Commission.

Persons claiming right to enrollment as citizens by blood may also be examined under oath as aforesaid.

Persons desiring enrollment should be promptly on hand.

TAMS BIXBY,
Acting Chairman.
A. S. MCKENNON,
T. B. NEEDLES,
Commissioners.

At the conclusion of the appointments provided for in the foregoing notice, upon the request of interested persons, appointments were held in the Chickasaw Nation at Duncan, October 17, 18, and 19, 1898, and at Chickasha, October 20, 21, and 22, 1898, in order that the citizens living in the vicinity of those two towns might be afforded opportunity to appear without incurring extra expense.

The following is a copy of a notice issued in the year 1899:

CENSUS NOTICE.

CHOCTAW NATION.

The Commission to the Five Civilized Tribes will be at the places on the dates named below for the purpose of taking a census of the Choctaw Indians by blood and Choctaw freedmen.

Heads of families may enroll the members of their families and minor children who make their homes with them. Guardians may enroll their wards.

Alikchi.—From Tuesday, April 18, to Thursday, May 4, 1899, inclusive.
Goodland.—From Monday, May 8, to Friday, May 12, 1899, inclusive.
Antlers.—From Monday, May 15, to Friday, May 19, 1899, inclusive.
Tushahoma.—From Monday, May 22, to Friday, May 26, 1899, inclusive.
Talihina.—From Monday, May 29, to Friday, June 2, 1899, inclusive.
Wister.—From Monday, June 5, to Friday, June 9, 1899, inclusive.
Oak Lodge.—From Monday, June 12, to Friday, June 16, 1899, inclusive.

Red Oak.—From Monday, June 19. to Friday, June 30, 1899, inclusive.
Hartshorne.—From Monday, July 3, to Friday, July 7, 1899, inclusive.
Calvin.—From Monday, July 10, to Friday, July 14, 1899, inclusive.
Durant.—From Monday, July 17, to Friday, July 21, 1899, inclusive.
Caddo.—From Monday, July 24, to Friday, July 28, 1899, inclusive.
Atoka.—From Monday, July 31, to Friday, August 11, 1899, inclusive.
South McAlester.—From Monday, August 14, to Friday, August 25, 1899, inclusive.
South Canadian.—From Monday, August 28, to Thursday, August 31, 1899, inclusive.

This work is done preparatory to making final rolls of Choctaw citizens and freedmen under the provisions of the act of Congress approved June 28, 1898, viz:

" * * * Said Commission is authorized and directed to make correct rolls of citizens by blood of all the * * * tribes, eliminating from the tribal rolls such names as may have been placed thereon by fraud or without the authority of law, enrolling such only as may have lawful right thereto, and their descendants born since such rolls were made, with such intermarried white persons as may be entitled to Choctaw * * * citizenship under the treaties and the laws of said tribes. * * * Said Commission shall make such rolls descriptive of the persons thereon, so that they may thereby be identified, and it is authorized to take a census of each of said tribes, or to adopt any other means by them deemed necessary to enable them to make such rolls. They shall have access to all rolls and records of the several tribes, and the United States court in Indian Territory shall have jurisdiction to compel the officers of the tribal governments, and custodians of such rolls and records, to deliver the same to said Commission, and on their refusal or failure to do so, to punish them as for contempt; as also to require all citizens of said tribes, and persons who should be enrolled, to appear before said Commission, and to enforce obedience of all others concerned, so far as the same may be necessary, to enable said Commission to make rolls as herein required, and to punish any one who may in any manner or by any means obstruct said work.

* * * * * * *

" It shall make a correct roll of all Choctaw freedmen entitled to citizenship under the treaties and laws of the Choctaw Nation, and all of their descendants born to them since the date of the treaty.

* * * * * * *

" No person shall be enrolled who has not heretofore removed to and in good faith settled in the nation in which he claims citizenship.

* * * * * * *

" The rolls so made, when approved by the Secretary of the Interior, shall be final, and the persons whose names are found thereon with their descendants thereafter born to them, with such persons as may intermarry according to tribal laws, shall alone constitute the several tribes which they represent.

" The members of said Commission shall, in performing all the duties required of them by law, have authority to administer oaths, examine witnesses, and send for persons and papers; and any person who shall willfully and knowingly make any false affidavit or oath to any material fact or matter before any member of said Commission, or before any other officer authorized to administer oaths, to any affidavits or papers, to be filed, or oath taken, before said Commission, shall be deemed guilty of perjury, and on conviction thereof shall be punished as for such offense."

Persons claiming rights as Choctaw freedmen will be examined orally, under oath, by members of the Commission, and if additional evidence be deemed necessary in any case, witnesses will in like manner be examined, and the rights of claimants thereupon determined by the Commission.

Persons claiming right to enrollment as citizens by blood may also be examined under oath as aforesaid.

Persons desiring enrollment should be promptly on hand.

TAMS BIXBY,
A. S. MCKENNON,
T. B. NEEDLES,
Commissioners.

The following is a copy of a second notice issued in the year 1899:

FINAL NOTICE TO CHOCTAW AND CHICKASAW CITIZENS.

The Commission to the Five Civilized Tribes again gives notice of its appointments for the enrollment of Choctaw and Chickasaw citizens. Those who have not been enrolled must be represented by heads of families at one of the places named below, without fail.

The attention of Chickasaw citizens is especially called to the necessity of presenting themselves for enrollment at one of these appointments, as the Commission will not do further census work in the Chickasaw Nation.

Hartshorne, Tuesday, August 1, to Saturday, August 5, inclusive.

Calvin, Monday, August 7, to Friday, August 11, inclusive.

Durant, Monday, August 14, to Friday, August 18, inclusive.

Caddo, Monday, August 21, to Friday, August 25, inclusive.

Atoka, Monday, August 28, to Saturday, September 2, inclusive.

South McAlester, Monday, September 4, to Wednesday, September 13, inclusive.

South Canadian, Thursday, September 14, to Saturday, September 16, inclusive.

TAMS BIXBY,
A. S. MCKENNON,
T. B. NEEDLES,
Commissioners.

The following is a copy of a notice issued in the year 1900 relative to the enrollment of Choctaws and Chickasaws:

DEPARTMENT OF THE INTERIOR, COMMISSION TO THE FIVE CIVILIZED TRIBES.

ENROLLMENT NOTICE.

The Commission to the Five Civilized Tribes will hear applicants for enrollment as citizens of the Choctaw and Chickasaw nations at

Atoka, Choctaw Nation, from Monday, June 4, to Friday, June 8, inclusive.

Colbert, Chickasaw Nation, from Monday, June 11, to Saturday, June 16, inclusive.

Any and all citizens who have not already made application for enrollment should appear at one of the points named above, without fail, as only those whose names appear on the final rolls can share in allotment.

TAMS BIXBY,
Acting Chairman.

The following is a copy of the notice issued in the year 1902:

DEPARTMENT OF THE INTERIOR, COMMISSION TO THE FIVE CIVILIZED TRIBES.

At a special election held in the Choctaw and Chickasaw nations, September 25, 1902, there was ratified by the citizens of these two tribes an act of Congress approved July 1, 1902, and entitled "An act to ratify and confirm an agreement with the Choctaw and Chickasaw tribes of Indians, and for other purposes."

This agreement, as so ratified and now effective, provides that the rolls of the citizens of the Choctaw and Chickasaw nations and Choctaw and Chickasaw freedmen shall be made as of the date of the final ratification of such agreement.

Section 34 of said agreement provides as follows:

"During the ninety days first following the date of the final ratification of this agreement the Commission to the Five Civilized Tribes may receive applications for enrollment only of those persons whose names are on the tribal rolls, but who have not heretofore been enrolled by said Commission, commonly known as 'delinquents,' and such intermarried white people as may have married recognized citizens of the Choctaw and Chickasaw nations in accordance with the tribal laws, customs, and usages on or before the date of the passage of this act by Congress, and such infant children as may have been born to recognized and enrolled citizens on or before the date of the final ratification of this agreement, but the application of no person whomsoever for enrollment shall be received after the expiration of the said ninety days."

For the purpose of enrollment of those classes of persons as provided by section 34, above quoted, the Commission to the Five Civilized Tribes will be in session at the following designated places and on the dates given:

Chickasha, Chickasaw Nation, October 15 to 17, inclusive.
Pauls Valley, Chickasaw Nation, October 20 to 24, inclusive.
Ardmore, Chickasaw Nation, October 27 to 31, inclusive.
Tishomingo, Chickasaw Nation, November 3 to 7, inclusive.
Ada, Chickasaw Nation, November 10 to 14, inclusive.
Atoka, Choctaw Nation, November 17 to 21, inclusive.
Kullituklo, Choctaw Nation, November 24 to 28, inclusive.
Antlers, Choctaw Nation, December 1 to 5, inclusive.
Tushkahoma, Choctaw Nation, December 8 to 12, inclusive.
Wister, Choctaw Nation, December 15 to 19, inclusive.
South McAlester, Choctaw Nation, December 22 to 24, inclusive.

After December 24, 1902, the Commission will be without authority to receive the application of any person whomsoever for enrollment as a citizen or freedman of either the Choctaw or Chickasaw Nation.

The appointments above designated will be the last opportunity afforded citizens of the Choctaw and Chickasaw nations to present their applications.

It is necessary that the status of all intermarried citizens on September 25, 1902, be determined, and citizens by intermarriage should avail themselves of this opportunity to present testimony showing their status on that date.

The Commission will also, at these appointments, receive applications for the enrollment of infant children born prior to September 25, 1902, and proofs of death of citizens and freedmen, previously listed for enrollment, but who died prior to said date.

No original applications for the enrollment of persons whose names are not on the tribal rolls or applications for identification as Mississippi Choctaws will be heard at these appointments.

COMMISSION TO THE FIVE CIVILIZED TRIBES,
TAMS BIXBY, *Acting Chairman.*

MUSKOGEE, IND. T., *October 4, 1902.*

"X. Whether the records in the custody and possession of the Department and the Commission to the Five Civilized Tribes show that all persons appearing before the Commission under the provisions of the act approved June twenty-eight were examined by said Commission as to their Indian blood and descent under oath and their exact statements reduced to writing and made of record."

It is a matter of general knowledge that all applicants appearing before the Commission to the Five Civilized Tribes at its appointments in the field during the years 1898 and 1899 were examined under oath, and the records of this office show that their testimony was reduced to writing either in the form of stenographic notes or recorded on census cards made in conformity with their statements.

During the appointments held in the years 1898 and 1899, in all cases where the right of the applicant to enrollment was contested by the Choctaw and Chickasaw nations, or where testimony as to the right to enrollment was deemed necessary, the same was reported by stenographers, and the testimony made a part of the record in the respective cases.

All applicants for enrollment as Choctaws and Chickasaws and Choctaw and Chickasaw freedmen who have appeared before the Commission or the Commissioner to the Five Civilized Tribes since the appointments in the field in the year 1899 have been sworn and their testimony, taken under oath, reported by stenographers, and made a part of this record in each case.

"XI. Whether the records in the possession and custody of the Department and the Commission to the Five Civilized Tribes show that persons of mixed Choctaw or Chickasaw Indian and negro blood appearing before the Commission under the provisions of the act approved June twenty-eight, eighteen hundred and ninety-eight, were examined by said Commission under oath solely as to their negro blood and descent and their testimony reduced to writing and made of record."

The records in the possession and custody of the Commissioner to the Five Civilized Tribes do not show that persons of mixed Choctaw or Chickasaw Indian and negro blood appearing before the Commission under the provisions

of the act of Congress of June 28, 1898, were examined solely with respect to their negro blood and descent, but their testimony was reduced to writing in the manner stated under item numbered X.

The records of this office show that, in some instances, persons who were descendants of slaves of Choctaw or Chickasaw Indians and who claimed right to enrollment as citizens by blood had applications pending for enrollment both as citizens by blood and as freedmen.

"XII. Whether the records in the possession of the Department and the Commission to the Five Civilized Tribes show that any other class of persons excepting only persons of mixed Choctaw or Chickasaw Indian and negro blood, appearing before said Commission under the provisions of the act of June twenty-eighth, eighteen hundred and ninety-eight, were examined under oath and their statements reduced to writing and made of record."

The records of this office show that in all cases of intermarried persons and persons whose right to enrollment was contested by the nations, the testimony of the applicant himself, as well as that of any witnesses who could be secured, was taken in shorthand and transcribed and made a part of the record in the respective cases.

The records of this office further show that, as to many of the freedmen whose rights were not contested by the nations, no testimony was taken, but only a memorandum, such as was made in the cases of citizens by blood whose rights to enrollment were not contested, the only difference being that in the cases of freedmen the memoranda were made by stenographers and afterwards transcribed, while in the cases of citizens by blood the memoranda were made in longhand by the examiner himself or by a clerk. In both cases the memoranda were made a part of the record.

As heretofore stated, with reference to the item numbered X, since the beginning of the year 1900 all applicants of whatever class appearing before the Commission to the Five Civilized Tribes have been examined at length and their testimony reduced to writing and made a part of the record in the respective cases.

"XIII. Whether the records in the possession of the Department and the Commission show that persons of mixed Choctaw or Chickasaw Indian and negro blood have been enrolled as 'freedmen' and denied enrollment as Indians, regardless of the quantum of their Indian blood."

The records of this office do not show that persons of mixed Choctaw or Chickasaw Indian and negro blood have been enrolled as freedmen and denied enrollment as Indians regardless of the quantum of Indian blood. According to the well-known custom of Indian tribes, the Choctaw and Chickasaw Indians trace their descent through the mother, and persons of mixed Indian and negro blood who derived their Indian blood through the mother have, regardless of the quantum of Indian and negro blood, been enrolled as citizens by blood.

In cases where the Choctaw or Chickasaw blood was derived through the father and evidence of the marriage to the negro mother shown, the children have been enrolled as citizens by blood.

"XIV. Whether the quantum of Choctaw or Chickasaw Indian blood was held by the Department to be material in the determination of the rights of persons of mixed Choctaw or Chickasaw Indian and white blood."

The records of this Office do not show that the quantum of Choctaw or Chickasaw Indian blood was held by the Department to be material in the determination of the rights of mixed Choctaw or Chickasaw Indian and white blood, but the question considered in the determination of the right of such persons to enrollment was that of residence and the tribal recognition and tribal enrollment of such persons or their parents.

"XV. The number of acres and the appraised value thereof of unselected and unallotted lands in the Choctaw and Chickasaw nations, respectively."

The unallotted area in the Choctaw Nation amounts to, approximately, 2,164,000 acres, which includes the area of, approximately, 1,373,000 acres affected by the proposed forest reserve, leaving subject to allotment, approximately, 791,000 acres, the appraised value of which is, approximately, $1,914,000.

The unallotted area in the Chickasaw Nation amounts to, approximately, 818,000 acres, the appraised value of which is, approximately, $3,720,000.

"XVI. Whether the order issued by the Hon. Ethan Allen Hitchcock, Secretary of the Interior, directing the Commission to suspend 'all selections and the issuance of patents' to certain timber lands in the Choctaw and Chickasaw nations, has been rescinded in whole or in part."

The instructions of the Secretary of the Interior of December 8, 1906 (I. T. D. 24490–1906), directing this Office to "suspend all selections and the issuance of patents within the area indicated on the inclosed map until further advised," were modified by the instructions of the Secretary of the Interior of January 12, 1907 (I. T. D. 354, 442–1907), directing "that the lands within the limits of the map transmitted herewith marked 'green' which have not been duly allotted or selected by members of the Choctaw and Chickasaw nations, are reserved from allotment until March 4, 1907, unless previously changed or modified, in order that in the meantime Congress may consider the recommendation of the Agricultural Department that a national forest reserve be established within the area thus reserved."

No further action having been taken prior to March 4, 1907, the Commissioner to the Five Civilized Tribes, on March 9, 1907, addressed the following telegram to the Secretary of the Interior:

"Referring to departmental letter of January twelve, nineteen seven, I. T. D. four hundred forty-two and three hundred fifty-four, nineteen seven, reserving from allotment or selection by members of the Choctaw and Chickasaw nations certain land in the Choctaw Nation as a tentative forest reserve until after March fourth, nineteen hundred seven, requests instructions as to whether this land is now subject to allotment by citizens of the Choctaw and Chickasaw nations."

In reply thereto there was received, on the same date, the following telegram from the Secretary of the Interior:

"Answering telegram ninth instant; allow no allotments of land within the reservation referred to by you until further instructed."

which telegram was confirmed by departmental letter of March 11, 1907 (I. T. D., 8442–1907).

No further instructions relative thereto have been received.

In accordance with the instructions contained in the letter calling for this report and in Indian Office telegram of the 8th instant, an estimate has been procured of the number of pages required and the cost thereof, to have printed a copy of the tribal rolls in the possession of this office that were used by the Commission and the Commissioner to the Five Civilized Tribes in enrolling citizens and freedmen of the Choctaw and Chickasaw nations.

Under item numbered II has been given a complete description of the rolls and memoranda rolls in the custody and possession of the Commissioner to the Five Civilized Tribes which appear to have been prepared by the officials, representatives, agents, or individual members of the Choctaw and Chickasaw nations from 1880 to 1900, inclusive, while under item numbered III has been given a list of the official rolls used by this office in the preparation of the final rolls of the Choctaw and Chickasaw nations, and the estimate is based upon the data so given. The 1878 Chickasaw annuity roll was not particularly described under item numbered II, as it was prepared prior to the year 1880, but has been taken into consideration in making the estimate in question. This roll is manuscript in form, with pages 8 by 13 inches in size, 30 lines to a page, and the names of Indians appear upon 81 pages thereof.

The several rolls listed under items numbered II and III are not uniform in size, nor as to the information with reference to the individuals and the families listed therein, and, in many particulars, are not systematic in their arrangement. These rolls have also, to a large extent, been poorly written, many corrections noted thereon in ink or pencil, and many names appear to have been entirely stricken from the rolls by the person or persons having possession of said rolls prior to their delivery to this office.

It has been found difficult, in this short time, to make an accurate count of the names contained in all of these rolls, but there has been procured from a local printer an estimate of the number of pages these rolls would make of printed matter if printed in brevier and on pages the size of that used in Government reports, together with an estimate of the cost thereof.

It has been roughly estimated that the rolls, if printed in brevier, will, including the proper headings, cover a total of approximately 2,000 pages, and will cost, approximately, $4,500. The printer, in furnishing this approximation, based his estimate upon a total of 100 complete copies of said rolls, and expressed it as his opinion that many pages of the rolls could not be reproduced if set in brevier and on pages the size of those used in Government reports.

Attention is particularly called to the fact that, on account of the unsatisfactory condition of these rolls, it will be impossible, in a very large number of

instances, to ascertain the correct spelling of the names and such names would necessarily have to be omitted from any printed copy thereof that might be made.

Respectfully, J. G. WRIGHT,
Commissioner.

Mr. BALLINGER. The report of the Secretary of the Interior on Senate resolution No. 69, addressed to Hon. Moses E. Clapp, chairman of the Committee on Indian Affairs, United States Senate, and submitted February 1, 1908, shows that between the years 1830 and 1856 there were seven rolls or partial rolls of the Choctaw Indians prepared by Government officers and agents which were official rolls of the tribes and upon which allotments of land were made, land scrip issued, or moneys paid to the members of said tribe thereon.

The same report shows that there were three official rolls of the Chickasaw Indians prepared between the years 1837 and 1840 by Government officers and agents and that none of these Choctaw or Chickasaw rolls were in the custody and possession of the Commission to the Five Civilized Tribes, or were consulted by the officers of said Commission in the preparation of the final citizenship rolls of said tribes.

Notwithstanding, the Assistant Attorney-General for the Department of the Interior in his instructions issued under date of March 17, 1899, and approved by the Secretary of the Interior on the same day, and which appear on pages 1554 and 1555, volume 2, Senate Report No. 5013, Fifty-ninth Congress, second session, directed the Commission as follows:

> The Commission was authorized and directed to enroll the persons indicated and to investigate the right of all other persons whose names were found upon any tribal roll and to omit all such as may have been placed thereon by fraud or without authority of law. They were not authorized to add any name not found upon some roll of the tribe except those of descendants of persons rightfully upon some roll.

This report shows that the following rolls and memoranda of rolls, which "appear to have been prepared by the officials, representatives, agents, or individual members of the Choctaw and Chickasaw nations from 1878 to 1900, inclusive, were alone used by the Commission and the Department in the preparation of the final citizenship rolls of the Choctaw and Chickasaw Indians:"

CHOCTAW NATION.

1885 census roll.
1893 leased district payment roll.
1896 census roll.

CHICKASAW NATION.

1878 annuity roll.
1893 leased district payment roll (Nos. 1 and 2).
Maytubby roll (Nos. 1 and 2).
Ieshatubby roll of Chickasaws residing in the Choctaw Nation who drew the leased district money as Chickasaws.
1896 census roll.

In a letter to the Secretary of the Interior which appears, commencing on page 11 of the report of Commissioner J. George Wright in response to Senate resolution No. 69, and which report was submitted by the Commission under date of January 24, 1903, certain correspondence of the Commission with the Department is set out. On

page 13 the Commissioner of Indian Affairs advised the Commission as follows:

This Office has examined and reported on a large number of cases of applicants for enrollment as citizens by blood of the Choctaw and Chickasaw nations and recommended that the applicants be rejected for enrollment on the presumption that statements by the Commission in those cases, of the general character of the statements in the two cases referred to herein, involved an exhaustive examination of the rolls of those two nations, and is now surprised and disappointed to learn that it was misled into believing that the examination had been thorough and complete. In other words, these recommendations and the action of the Department thereon were based on false premises, and many of the conclusions reached may have been consequently erroneous.

This Office, in the light of the circumstances presented, recommends that the Bettie Lewis case, and all other rejected applicants for citizenship in the Choctaw and Chickasaw nations, be held for further consideration until the Commission is in a position to make a more thorough examination with reference to what the Choctaw and Chickasaw rolls actually do show.

On page 14 of the report appears a communication from the principal chief of the Choctaw Nation, in which he advised the Commission:

It is absolutely impracticable for me to furnish a complete roll of the Choctaws, together with all persons admitted after June 10, 1896.

On page 17 of the report, with reference to the rolls used by the Commission in the preparation of the final tribal rolls, the Commission states:

All of the rolls so obtained by Commissioners Bixby and McKennon were procured from individuals who had said rolls in their possession, and the information which the Commissioners obtained at that time leads to the conclusion that it had been the practice of tribal officials charged with any duty in connection with tribal rolls to withdraw them from the executive offices when necessary and to retain them among their personal effects.

In referring further to these tribal rolls and memorandum furnished by the Indian officers to the Commission, and which were used by the Commission in the preparation of the tribal rolls, the Commissioner to the Five Civilized Tribes states:

The memorandum rolls, hereinbefore referred to, from which the census rolls were made, and all other parts of rolls in the possession of this office contain many names which have been lined out with ink or pencil, names interlined in pencil or with ink of a different kind from that used in the preparation of the rolls, and no information could ever be secured from the tribal officials tending to show by whom or under what authority such corrections and interlineations were made.

On page 36 of the Report of the Commission to the Five Civilized Tribes there appears the following question, which was specification 10 in the resolution, and the answer thereto by the Commissioner:

Whether the records in the custody and possession of the Department and the Commission to the Five Civilized Tribes show that all persons appearing before the Commission under the provisions of the act approved June 28, 1898, were examined by said Commission as to their Indian blood and descent under oath and their exact statements reduced to writing and made of record.

The Commissioner reports:

It is a matter of general knowledge that all applicants appearing before the Commission to the Five Civilized Tribes at its appointments in the field during the years 1898 and 1899 were examined under oath and the records of this office show that their testimony was reduced to writing either in the form of stenographic notes or recorded on census cards made in conformity with their statements.

During the appointments held in the years 1898 and 1899 in all cases where the right of the applicant to enrollment was contested by the Choctaw and Chickasaw nations, or where testimony as to the right to enrollment was deemed necessary, the same was reported by stenographers and the testimony made a part of the record in the respective cases.

It will be observed that the Commissioner states that it is "a matter of general knowledge" that all persons appearing before the Commission were examined under oath except where the right of the applicant to enrollment was not contested by the Choctaw and Chickasaw nations. This answer clearly shows that any person whom the officials of the Choctaw and Chickasaw nations might desire enrolled were enrolled by the Commission regardless of their rights and no testimony was taken in their cases.

But this statement to the effect that any person appearing before the Commission was examined under oath as to his Indian blood and descent is false, or Commissioner Bixby, who had direct charge of this work, gave perjured testimony before the select committee of the Senate, sitting at Muskogee, in November, 1906. On page 498 of Senate Report No. 5013, part 1, Fifty-ninth Congress, second session, Mr. Bixby testified as follows:

Q. What is your name, official position, and residence?

Mr. BIXBY. My name is Tams Bixby. I am Commissioner to the Five Civilized Tribes. I live in Muskogee.

Q. Were you in the field when applicants were examined and identified under the act of 1898?

Mr. BIXBY. I was in the Chickasaw Nation in the fall of 1898.

Q. Were you in charge of the examination and identification of either the citizens by blood, freedmen, or intermarriage?

Mr. BIXBY. I presided in the tent at which the applicants who claimed enrollment by reason of Chickasaw blood or Choctaw blood presented themselves.

On page 500 Mr. Bixby testified as follows:

Q. Was everything that was said by the applicant at the time he or she appeared before you for enrollment entered upon the examination record such as that [exhibiting paper to witness]?

Mr. BIXBY. No, sir; not at all.

Q. Such portions of their statements as you deemed proper to place upon it.

Mr. BIXBY. We did not take any testimony in our tent at all.

Q. In the tent in which citizens of mixed Indian and negro blood appeared did they enter everything said by the applicant?

Mr. BIXBY. I do not know what you mean by that. In the tent where the freedmen applied they did take some testimony. They did have some stenographers. I did not have anything to do with that. In the tent where I enrolled the Indians by blood we simply made cards. We did not take any testimony at all. That is the proceeding we followed all through the Creek Nation. We did not take any testimony.

The above is the sworn testimony of the man who had peculiar knowledge of the exact facts surrounding the examination of applicants, and his admissions, under oath, were admissions of his own dereliction, and it is hardly to be supposed that he would have made them had they not been true. He states positively that no testimony was taken except in the cases of freedmen.

On page 37 of the Report of the Commissioner to the Five Civilized Tribes appears specification 11, contained in the Senate resolution, and the answer of the Commissioner thereto:

Whether the records in the possession and custody of the Department and the Commission to the Five Civilized Tribes show that persons of mixed Choctaw or Chickasaw Indian and negro blood appearing before the Commis-

sion under the provisions of the act approved June 28, 1898, were examined by said Commission, under oath, solely as to their negro blood and descent and their testimony reduced to writing and made of record.

The Commissioner says:

The records in the possession and custody of the Commissioner to the Five Civilized Tribes do not show that persons of mixed Choctaw and Chickasaw Indian and negro blood appearing before the Commission under the provisions of the act of Congress of June 28, 1898, were examined solely with respect to their negro blood and descent, but their testimony was reduced to writing in the manner stated under item numbered X.

The records of this office show that in some instances persons who were descendants of slaves of Choctaw or Chickasaw Indians, and who claimed right to enrollment as citizens by blood, had applications pending for enrollment both as citizens by blood and as freedmen.

Regardless of the quantum of Indian blood that the claimant possessed, if it could be shown that he or she was on either side descended from a person once held in involuntary servitude, the right of every claimant was denied by the Commission and the Department. This was the uniform holding of the Commission to the Five Civilized Tribes and the Commissioner of Indian Affairs regardless of the quantum of Indian blood of the claimant. In some cases applicants of seven-eighths Indian blood were denied enrollment as Indians and enrolled as freedmen or negroes, as the records show. Here is one of the examination records of this class of persons of mixed Choctaw or Chickasaw Indian and negro blood and who was of more than half Indian blood, as it appears from the certified copy of the examination record set out on page 1514, Senate Report No. 5013, part 2, Fifty-ninth Congress, second session:

In the matter of the application of Lydia Jackson for enrollment as Chickasaw freedmen. Lydia Jackson enrolled.

On pages 1514 to 1517 appear other similar records. Can any sane person contend that the so-called examination of Lydia Jackson, as it appears from the record, was an examination in fact, or that any questions were asked her as to her Indian blood and descent? Will any sane person contend that this was in fact an examination?

On page 38 of the Report of the Commissioner to the Five Civilized Tribes appears the following question, which was specification 12 of the resolution, and the answer of the Commission thereon:

XII. Whether the records in the possession of the Department and the Commission to the Five Civilized Tribes show that any other class of persons excepting only persons of mixed Choctaw or Chickasaw Indian and negro blood appearing before said Commission under the provisions of the act of June 28, 1898, were examined under oath and their statements reduced to writing and made of record.

The Commissioner reports:

The records of this office show that in all cases of intermarried persons and persons whose right to enrollment was contested by the nations the testimony of the applicant himself, as well as that of any witnesses who could be secured, was taken in shorthand and transcribed and made a part of the record in the respective cases.

The records of this office further show that as to many of the freedmen whose rights were not contested by the nations no testimony was taken, but only a memorandum, such as was made in the cases of citizens by blood, whose rights to enrollment were not contested, the only difference being that in the cases of freedmen the memoranda were made by stenographers and afterwards tran-

scribed, while in the cases of citizens by blood the memoranda were made in longhand by the examiner himself or by a clerk. In both cases the memoranda were made a part of the record.

It will be observed from this statement that the Commission does not claim to have examined under oath any person whose enrollment was not contested by the tribal authorities. But the Commissioner is again mistaken in his statement that the testimony of the claimants and their witnesses was taken down in shorthand and reduced to writing. No testimony, as Commissioner Bixby testified and as hereinbefore set out, was taken and reduced to writing except in the cases of freedmen.

It will be further observed from this statement that the favoritism of Indian officials extended likewise to freedmen, and that any case where the Indian officers desired the enrollment of the freedman applicant no testimony was taken.

On page 39 of the Report of the Commissioner appears the following question and answer:

XIII. Whether the records in the possession of the Department and the Commission show that persons of mixed Choctaw or Chickasaw Indian and negro blood have been enrolled as "freedmen" and denied enrollment as Indians, regardless of the quantum of their Indian blood.

The Commissioner reports:

The records of this office do not show that persons of mixed Choctaw or Chickasaw Indian and negro blood have been enrolled as freedmen and denied enrollment as Indians regardless of the quantum of their Indian blood. According to the well-known custom of Indian tribes, the Choctaw and Chickasaw Indians trace their descent through the mother, and persons of mixed Indian and negro blood who derived their Indian blood through the mother have, regardless of the quantum of Indian and negro blood, been enrolled as citizens by blood.

In cases where the Choctaw and Chickasaw blood was derived through the father and evidence of the marriage to the negro mother shown the children have been enrolled as citizens by blood.

As against this statement I desire to put the sworn statement of Commissioner A. S. McKennon, who in testifying with reference to the enrollment of persons of mixed Choctaw or Chickasaw Indian and negro blood, on page 946 of the report of the select committee, Senate Report No. 5013, part 1, Fifty-ninth Congress, second session, said:

I simply addressed myself to the task of determining whether they or their ancestors were slaves of the Chickasaws. If so, I enrolled them; if not, they were not entitled.

The records in the cases of this class of persons show that the one fact the Commission sought to elicit from the applicant was that he or she was a descendant of a person once held in involuntary servitude. And in all cases where it appeared that the person appearing before the Commission and claiming rights was of servile descent on either side he or she was enrolled as a freedman. This holding on the part of the Commission was one of the questions involved in the test case of Joe and Dillard Perry, appearing on page 167 of the laws affecting the Five Civilized Tribes decided by the Assistant Attorney-General for the Department of the Interior on February 21, 1905; and in the decision in that case the Commissioner to the Five Civilized Tribes and the Commissioner of Indian Affairs denied the right of Joe and Dillard Perry to enrollment on the ground that they were of servile

descent and attempted to sustain their contention by citing a decision in the case of Molsie Butler, whose grandmother was held in slavery.

Here we find the brazen statement made by the Commissioner that in the distribution of this tribal property the Commission followed the Indian customs and laws exclusively and disregarded the terms and provisions of the treaty and the grant, by which treaty and grant the Government conveyed the property in controversy to the Choctaw Nation in trust for the exclusive use and benefit of all those persons who comprised the Choctaw community as it existed in 1830, and their descendants. No Indian law or custom could subtract from or add to a right secured by the treaty and the grant. But the Choctaw and Chickasaw constitutions expressly provided that no law should be enacted by the legislatures of the respective nations that was in conflict with the Constitution, treaties, and laws of the United States, so that there can be no warrant in law for the holding of the Commission.

The records in these cases, hereinbefore referred to, show that persons of seven-eighths Indian blood were enrolled as freedmen.

In answer to specification 15 the report shows that the Secretary of the Interior has withdrawn 1,373,000 acres of the allottable lands of the Choctaws from allotment without any pretense of authority of law therefor.

It is this utter disregard of law that has permeated every act of the administrative officers in their management of these trust estates that has resulted in the thousands of protests now being received from persons who have been illegally and fraudulently denied their property rights.

STATEMENT OF MR. GEORGE A. WARD, CHIEF OF DIVISION OF INDIAN TERRITORY, OFFICE OF INDIAN AFFAIRS.

Mr. WARD. Mr. Chairman and gentlemen of the committee, if I understand the object of the bill correctly it is, first, to allow persons who have been enrolled as freedmen and may be in part of Indian blood to bring suit in the proper United States courts to determine their rights, if any they have, as Indians under the treaty of 1830; second, to allow those who were rejected by the citizenship court to do the same thing, and, third, to let anyone, no matter where he lives, if he claims a right in the Choctaw and Chickasaw tribal estate and made application to the Commission for enrollment, to bring that suit, no matter whether he resides in the Indian Territory or Alaska.

Now, I think that it is proper for me to say at the outset, on behalf of the Department, that as to the charges that have been made here, that the Interior Department and the Indian Office were parties to a fraud in law and in fact in connection with the enrollment in the Five Civilized Tribes, there has not been a scintilla of evidence shown to you to substantiate that statement. The case of Laura E. Aiken has been cited. I say to you frankly I do not remember what was held in that case, nor the points involved. It was a physical impossibility to remember all these cases. But if this committee wants copies of the correspondence, I will have them prepared and furnish them to the committee. In the defense of the man who died and did probably write the decision referred to, I may say that he

could have been perfectly sane when he wrote that decision and could have become insane two weeks later. I will say that he may have written the decision two weeks before he took sick.

Mr. McGUIRE. Could we have a copy of that decision?

Mr. WARD. Yes, sir. I will furnish you with a copy of our letter in that case and with a copy of the decision. That is the case of Laura E. Aiken, a Cherokee.

Mr. BALLINGER. That is a Cherokee case, and it was decided under different laws.

Mr. WARD. It is the contention of the Department that the foundation on which the title to the Choctaw and Chickasaw lands is based is the treaty of 1820, and that the cession by this treaty was complete and conveyed the land. Now I will read article 2 of that treaty, just the conveyance clause, from 2 Kappler, page 192 [reads]:

For and in consideration of the foregoing cession on the part of the Choctaw Nation, and in part satisfaction for the same, the Commissioners of the United States, in behalf of said States, do hereby cede to said nation a tract of country west of the Mississippi River, situate between the Arkansas and Red River, and bounded as follows.

Then it goes on to describe the land. It may be contended that these commissioners had not power to bind the United States, but when that treaty was proclaimed, as it was on January 8, 1821, the United States was estopped from in any manner challenging its validity. Its provisions became law, and were equally binding on the United States and on the Choctaws. The Interior Department says this was an absolute grant, and that as the title to the lands was in the United States, this cession conveyed to the Choctaws all title which the United States had. We ceded them then clear from the Arkansas River to Mexico. In 1821 we made a treaty with Spain, by which the one hundredth degree west longitude was fixed as the divisional line between the Spanish and the American territory.

In 1825 we made another treaty with the Choctaws. Omitting the preamble, and reading just the first part of the section, the cause relating to the cession, from Kappler, volume 2, page 212, what does the United States do? What does the United States accept from the Choctaw Nation? [reads]:

The Choctaw Nation do hereby cede to the United States all that portion of the land ceded to them by the second article of the treaty of Doak Stand, as aforesaid, lying east of a line beginning on the Arkansas, 100 paces east of Fort Smith, and running thence, due south, to Red River.

The United States accepted the cession from the Choctaws back to the Government. If the Choctaws did not have the title, how could they cede the land back to the Government?

Mr. McGUIRE. What is the date of that treaty, Mr. Ward?

Mr. WARD. It is January 20, 1825; Kappler, second edition, volume 2, pages 211, 212.

Now, let us take article 2 of the treaty of 1830 and see what that saws. That treaty will be found in Kappler, volume 2, page 311 [reads]:

ARTICLE II. The United States under a grant specially to be made by the President of the United States shall cause to be conveyed to the Choctaw Nation a tract of country west of the Mississippi River, in fee simple to them and their descendants, to inure to them while they shall exist as a nation and live on it, beginning near Fort Smith, where the Arkansas boundary crosses the Arkansas River, running thence to the source of the Canadian Fork, if in the limits of

the United States, or to those limits; thence due south to Red River, and down Red River to the west boundary of the Territory of Arkansas; thence north along that line to the beginning. The boundary of the same to be agreeably to the treaty made and concluded at Washington City in the year 1825. The grant to be executed so soon as the present treaty shall be ratified.

Now what did the United States convey? What was the title conveyed? What was the special grant? First, the title was absolute under the treaty of 1820. There was no reversion, no provision that if the tribe should become extinct the land should revert to the Government. That did not come in until the treaty of 1830 and the title conveyed by the patent of March 23, 1842, which identifies article 2 of the treaty of 1830, conveyed to the Choctaw Indians a base fee.

Mr. BALLINGER. Mr. Chairman, may I ask one question? What do you [addressing Mr. Ward] think this language meant which occurred in the negotiations of the treaty, when "Chief Leadstone inquired whether the treaty was to be considered as retaining former treaties and their provisions, or as repealing all former treaties, and the present one only to be relied on? The answer was that it was desirable to fully embrace everything; that the present might be considered the only treaty that was to be looked to; that, excepting former annuities, all previous treaties were to be considered as revoked and set aside." That is the correspondence leading up to the treaty of 1830.

Mr. WARD. I will tell you what the Supreme Court of the United States held on it when I reach it.

What is the difference between article 2 of the treaty of 1830 and the same article of the treaty of 1820? It is simply as I said with reference to the cession and the reversionary interest to the Government; that is practically all, and the proper description of the lands except that they added the words "if within the limits of the United States" in order to cover what was done by the treaty of 1821 with Spain; and the Government well knew that the land was not within the limits of the United States.

Now let us take the decision of the Supreme Court of the United States, in 179 United States, which was cited here the other day. It makes a vast amount of difference, Mr. Chairman and gentlemen, whether you read a few picked lines or whether you read what the court actually said. After mentioning and identifying the treaty of 1830, which is in 7 Statutes, 333, the court said [reads]:

It can not be doubted that the purpose of article 2 of the treaty of 1830 was to provide for a special grant to the Choctaws of the lands intended to be ceded to them by article 2 of the treaty of 1820, and no others. It was as if the parties declared that the words in the treaty of 1820, "thence up the Arkansas to the Canadian Fork, and up the same to its source, thence due south to the Red River," should be held to mean the same as the words in the treaty of 1830, "thence to the source of the Canadian Fork, *if* in the limits of the United States, *or to those limits thence* due south to Red River." The treaty of 1830 plainly imports the understanding of the parties at that time that whatever might be the wording of the treaty of 1820, the United States had not thereby intended to grant, and the Choctaws had not thereby expected to receive, any lands at or near the source of the Canadian Fork unless that point was within the limits of the United States—that both parties had in view at that time only lands within the limits of the United States.

As the treaty of 1820 provided that the Choctaws should have lands as far west as the source of the Canadian River, it is suggested that the United States could not legally modify that provision by the subsequent ratification in 1821 of the treaty with Spain signed in 1819. But it was entirely competent for the

parties, without any new or valuable consideration intervening, to rectify a mistake in the description of boundaries, and to agree, as in effect they did by the treaty of 1830, that the words "to the Canadian Fork, and up the same to its source," in the treaty of 1820, were to be interpreted as meaning "to the source of the Canadian Fork, if in the limits of the United States, or to those limits," thus relieving the United States from any obligation to make a special grant to the Choctaws of lands which by the treaty with Spain, ratified in 1821, had been recognized as part of Spanish territory. After the treaty of 1830 the line "thence due south to the Red River" was to be taken as running from a point on the dividing line between the United States and Spain, the one hundredth degree of west longitude as established by the treaty of 1819–1821, *thence due* south to that river.

In confirmation of the view we have taken of the treaty of 1830, we may refer to the agreement made January 17, 1837, by which the Choctaws assented to the formation by the Chickasaws of a district "within the limits of *their country*" (11 Stat.). In the description of the boundaries of that district, which adjoins the district of the Choctaws on the west, it appears that one of the lines ran to a point 10 or 12 miles above the mouth of the South Fork of the Canadian River, "thence west along the main Canadian River to its source, *if* in the limits of the United States, *or to those limits;* and thence, due south to Red River, and down Red River to the beginning." Here was a repetition of the words of the treaty of 1830, and a distinct recognition of the fact that the Choctaw country was not to be regarded as embracing any lands not then, in 1837, within the limits of the United States. It can not be contended that any lands west of the one hundredth degree of west longitude were within such limits as then established.

You see, we first ceded by the treaty of 1820 from the Arkansas to Mexico and then we made a treaty in 1821 with Spain, fixing the one hundredth degree of west longitude as the boundary line between the Spanish and American territory. Consequently all that land west of the one hundredth meridian belonged to Spain. Then when we made the treaty of 1830, we stuck in the words "if within the limits of the United States or to those limits" ceding them the same land, well knowing that west of the one hundredth degree it was not within the United States.

Mr. McGUIRE. Where is the one hundredth meridian there?

Mr. WARD. It runs in just this side of No Man's Land. It included all that Wichita country and Kiowa and Comanche country.

Mr. STEPHENS. It is the east side of the Pan Handle and the west side of Greer County.

Mr. McGUIRE. It must be the west Oklahoma line?

Mr. STEPHENS. It is.

Mr. WARD. It is, and that includes No Man's Land. Originally No Man's Land was not included in Oklahoma.

Mr. STEPHENS. No Man's Land is on the west side of Texas.

Mr. McGUIRE. It is the eastern boundry of No Man's Land——

Mr. STEPHENS. And of the Pan Handle of Texas. That line was run in 1859 by John H. Clark on the part of the United States and by Gen. William Scurry on the part of Texas.

Mr. WARD. The one hundredth meridian runs along the east side of Beaver County.

Mr. McGUIRE. Any of this here [indicating on map] might have been ceded.

Mr. WARD. All these vast lands were ceded in 1820 to those Indians, clear on out to Mexico; then by reason of this treaty of 1821 to Spain, and in 1825 and in 1830 we cut it down here [indicating].

Mr. McGUIRE. The one hundredth meridian?

Mr. WARD. Yes, sir.

Mr. McGUIRE. So far as the title is now, or was recently, to the Indian Territory, which includes the Choctaw and Chickasaw nations, the treaty of 1820 did give them title?

Mr. WARD. It give the Choctaws absolute title. I propose to cite the decision of the Supreme Court of the United States to that effect.

Mr. STEPHENS. What treaty was it that cut them down to the ninety-eighth meridian?

Mr. WARD. These were friendly Indians down here [indicating]. There was a clause in the treaty of 1866, the case which Captain Stanley carried through the courts; and it was the same way all through here [indicating].

Mr. STEPHENS. You dropped back from the one hundredth meridian to the ninety-eighth?

Mr. WARD. Reading from the same report, United States Reports 179, page 521 [reads]:

> There can be no doubt as to the meaning and scope of the treaty of 1855. In order simply to avoid future disputes the United States desired the relinquishment by the Choctaw Nation of all claim to any territory west of the one hundredth degree of west longitude, and, in addition, it obtained a lease of the territory between the ninety-eighth and one hundredth degrees of west longitude for the permanent settlement of the Wichita and certain other tribes or bands of Indians, the right being reserved to the Choctaws and Chickasaws to settle on the leased territory as theretofore. The consideration for "the relinquishment *and* lease" was $800,000. It is immaterial to inquire as to the value placed by the Indians or by the United States upon the reliquishment and lease, respectively. The Indians accepted for both the aggregate amount named. It is idle therefore to contend that the Indians had any claim upon the United States, after the treaty of 1855, for lands west of the one hundredth degree of west longitude. The treaty closed that dispute forever, if it had not been closed by previous treaties and by the special grant of 1842, made pursuant to article 2 of the treaty of 1830, and which, as we have said, estopped the Indians from claiming any lands not within the limits of the United States. As to the lands the control of which was acquired by the lease embodied in the treaty of 1855, it may be assumed that the United States did not then desire to obtain the fee, but took the land for specifically defined objects, upon the accomplishment of which the Indians could insist as a condition of the lease.

Now, what are they talking about? What is the Supreme Court talking about? The property of the Choctaw and Chickasaw Indians as it exists to-day? No. The property of the leased district and that west of the one hundredth degree of west longitude. "The treaty closed that dispute forever." What dispute? The dispute about the leased district and the dispute about the lands west of the one hundredth degree.

Mr. BALLINGER. What treaty?

Mr. WARD. The treaty of 1855.

The court does not mention the land of the Choctaws and the Chickasaws as they exist to-day. Remember that the land west of the one hundredth degree was the land that went to Spain. Of course we got it back; but remember that after the treaty of 1855 the land between the ninety-eighth degree and the one hundredth degree of west longitude became what is known as the "leased district."

Mr. McGUIRE. That was the land ceded to the Government for friendly Indians?

Mr. WARD. Yes.

Mr. McGUIRE. And that decision there only relates to the land between the ninety-eighth and the one hundredth degree, and between

the one hundredth degree and Mexico. That is the only land alluded to in that decision?

Mr. WARD. Exactly. Nothing is said about the land of the Indians as it exists now.

Mr. MCGUIRE. The property of the Choctaws and Chickasaws, now known as the Choctaw and Chickasaw nations, is not brough into question or the fee simple challenged by that decision?

Mr. WARD. No, sir; and irrespective, Mr. Chairman, of whether the title to the nations as they now exist was conveyed by the treaty of 1820 or the treaty of 1830, the treaty of 1855 made no change. It only changed as to the two tracts you have mentioned. In the opinion of the court, "the treaty closed that dispute forever, if it had not been closed by previous treaties and by the special grant of 1842, made pursuant to article 2 of the treaty of 1830, and which, as we have said, estopped the Indians from claiming any lands not within the limits of the United States."

Now, what are they talking about? "Lands not within the limits of the United States" at the time of the treaty of 1825.

Mr. MCGUIRE. From the one hundredth degree to Mexico?

Mr. WARD. Yes, sir. Then the opinion continues:

As to the lands the control of which was acquired by the lease embodied in the treaty of 1855, it may be assumed that the United States did not then desire to obtain the fee, but took the lands for specifically defined objects, upon the accomplishment of which the Indians could insist as a condition of the lease.

That is, between the ninety-eighth and the one hundredth degree.

Mr. STEPHENS. What are you reading from?

Mr. WARD. That is 179 United States, beginning on page 494. I read from page 518, I think it is, and page 522.

Now, you see what the Supreme Court did say about the title.

Mr. MCGUIRE. Before you commence on that I want to get clear on this proposition, if you have it in your mind at this time: What were the words added in the treaty of 1830 in addition to the treaty of 1820?

Mr. WARD. That the United States would cause a patent in fee simple to issue to the nation, to inure to them and their descendants while they existed as a nation and lived upon it.

Mr. MCGUIRE. That is in both treaties?

Mr. WARD. No. That is in the treaty of 1830. The treaty of 1820 was simply a straight cession. There was no provision for patent, and the treaty of 1825, that ceded back to the United States from the Choctaws, was a straight cession. There was no provision for patents. The treaty itself conveyed title.

Mr. MCGUIRE. What treaty was it that conferred title within the limits of the United States?

Mr. WARD. The treaty of 1820. I now cite you article 2 of that treaty, which reads as follows:

ART. 2. For and in consideration of the foregoing cession, on the part of the Choctaw Nation, and in part satisfaction for the same, the Commissioners of the United States, in behalf of said States, do hereby cede to said nation a tract of country west of the Mississippi River, situate between the Arkansas and Red rivers and bounded as follows: Beginning on the Arkansas River, where the lower boundary line of the Cherokees strikes the same; thence up the Arkansas to the Canadian Fork, and up the same to its source; thence due south to the Red River; thence down Red River, 3 miles below the mouth of Little River, which empties itself into Red River on the north side; thence a direct line to the beginning.

While the same article of the treaty of 1830 contains the following words:

ART. 2. The United States, under a grant specially to be made by the President of the United States, shall cause to be conveyed to the Choctaw Nation a tract of country west of the Mississippi River, in fee simple to them and their descendants, to inure to them while they shall exist as a nation and live on it, beginning near Fort Smith, where the Arkansas boundary crosses the Arkansas River, running thence to the source of the Canadian Fork, if in the limits of the United States, or to those limits; thence due south to Red River, and down Red River to the west boundary of the Territory of Arkansas; thence north along that line to the beginning. The boundary of the same to be agreeably to the treaty made and concluded at Washington City in the year 1825. The grant to be executed so soon as the present treaty shall be ratified.

The principal difference is that article 2 of the treaty of 1820 was a straight and complete cession and conveyed the title to the property to the Indians. Article 2 of the treaty of 1830, this treaty being made subsequent to the treaty with Spain, provides for the issuance of a patent and declares that the land shall inure to the nations and their descendants so long as they exist as a nation, but that if they fail to live on the land or become extinct that it shall revert to the Government.

Let us see what the Supreme Court of the United States said about the title to the Choctaw and Chickasaw lands. I will read from 119 United States, page 138, in the case of the Choctaw Nation against The United States. I will just read the part that applies here. The court was talking about the treaty of 1830. The opinion says:

The most noticeable thing, upon a careful consideration of the terms of this treaty, is that no money consideration is promised or paid for a cession of lands, the beneficial ownership of which is assumed to reside in the Choctaw Nation, and computed to amount to over 10,000,000 acres. It was not an exchange of lands east of the Mississippi River for lands west of that river. The latter tract had already been secured to them by its cession under the treaty of 1820.

Now, remember that in 1820 they gave their lands east of the Mississippi River for the lands west. That is when the deal was made; when they ceded their lands east for the lands west.

Mr. BALLINGER. You do not mean to represent that the Choctaws ceded all their lands east of the Mississippi?

Mr. WARD. I will reach that when I get to it.

It was not an exchange of lands east of the Mississippi River for lands west of that river.

Now listen [reads]:

The latter tract had already been secured to them by its cession under the treaty of 1820.

Let us see what it is. The latter tract is what tract? "For lands west of that river. The latter tract had already been secured to them by the cession under the treaty of 1820." That is what the Supreme Court of the United States says, and says where they got their lands. It does not say it was conveyed under article 2 of the treaty of 1830, but by the treaty of 1820, and that there was no consideration and nothing is promised or paid for a cession of the lands under the treaty of 1830. The white people had begun to encroach upon the Indians in Alabama and Mississippi, and the treaty of 1830 was for the purpose of forcing them to remove west, and likewise the treaty of 1832 with the Chickasaws.

Mr. BALLINGER. Under what treaty was the patent issued?

Mr. WARD. Under article 2 of the treaty of 1830.

Mr. BALLINGER. Under which we claim?

Mr. WARD. Yes. The patent identifies article 2 of the treaty of 1830, and is dated March 23, 1842.

Now, then, we reach the treaty with the Chickasaws. I will not go into that because it is getting late. It will be found in Kappler, volume 2, page 357. In that treaty the Chickasaws ceded their country down in the South, Louisiana, Mississippi, etc., to the United States, and agreed to find a location elsewhere. It ran along until 1837. They had sent delegates and so forth to the Choctaw Nation, with a view of making arrangements for their settlement in that country, and it ran along until January 13, 1837 (see Kappler, vol. 2, p. 487), when the Choctaws and Chickasaws themselves made a treaty. The United States did not make that treaty, as is often believed. The Choctaws and Chickasaws made that treaty themselves, and the United States consented.

By this treaty the Chickasaws were to form a district within the Choctaw country. That district was to be known as the Chickasaw district. They were not to have a separate government. They were to have equal representation in the national council, with the Choctaws. But they did not get along well, and finally they established their own government, and each government was recognized by the treaty of 1855.

Now that was the last treaty with the Choctaw and Chickasaw nations prior to the civil war. The war broke out in 1861, and the Choctaws and Chickasaws, as a rule, were loyal to the Confederacy. The country, as we all know, was torn asunder, and after the war was all over, let us see what the Government of the United States did to the other of the Five Civilized Tribes before we go to the Choctaws and Chickasaws. Let us see what was done to the Creeks and the Cherokees and the Seminoles, who also, as a rule, were loyal to the Confederacy. The Government said to them, You must take your freedmen in with you, with the right to participate in your lands and funds. You must take them in and give them an equal amount of land with you. The freedmen of the Creek Nation get 160 acres of land each, just the same as the Creek Indian. In the Cherokee Nation it is the same, except that the amount of land is different, and in the Seminole Nation it is the same. The Indians in these nations share in their own lands only equally with their former slaves and their descendants. The Choctaws said, "No." The Choctaws said, "No; we will not take these freedmen in on an equal basis with us. They have no right to share in our property." What did the Government do? It is in article 3 of the treaty of 1866. It is very long, and I would like to have the article go in as part of the record and thus avoid reading it. It is found in Kappler, volume 2, page 919, article 3.

The following is article 3, referred to:

The Choctaws and Chickasaws, in consideration of the sum of $300,000, hereby cede to the United States the territory west of the ninety-eighth degree west longitude, known as the leased district, provided that the said sum shall be invested and held by the United States, at an interest not less than 5 per cent, in trust for the said nations, until the legislatures of the Choctaw and Chickasaw nations, respectively, shall have made such laws, rules, and regulations as may be necessary to give all persons of African descent, resident in the said nation at the date of the treaty of Fort Smith, and their descendants, heretofore held in slavery among said nations, all the rights, privileges, and immunities, including the right of suffrage, of citizens of said nations, except

in the annuities, moneys, and public domain claimed by, or belonging to, said nations, respectively; and also to give to such persons who were residents as aforesaid, and their descendants, forty acres each of the land of said nations on the same terms as the Choctaws and Chickasaws, to be selected on the survey of said land, after the Choctaws and Chickasaws and Kansas Indians have made their selections as herein provided; and immediately upon the enactment of such laws, rules, and regulations, the said sum of $300,000 shall be paid to the said Choctaw and Chickasaw nations in the proportion of three-fourths to the former and one-fourth to the latter, less such sum, at the rate of $100 per capita, as shall be sufficient to pay such persons of African descent before referred to as within ninety days after the passage of such laws, rules, and regulations shall elect to remove and actually remove from the said nations, respectively. And should the said laws, rules, and regulations not be made by the legislatures of the said nations respectively, within two years from the ratification of this treaty, then the said sum of $300,000 shall cease to be held in trust for the said Choctaw and Chickasaw nations, and be held for the use and benefit of such of said persons of African descent as the United States shall remove from the said Territory in such manner as the United States shall deem proper, the United States agreeing, within ninety days from the expiration of the said two years, to remove from said nations all such persons of African descent as may be willing to remove; those remaining or returning after having been removed from said nations to have no benefits of said sum of $300,000, or any part thereof, but shall be upon the same footing as other citizens of the United States in the said nations.

Now, by article 2 it was agreed that slavery should be forever abolished among the Choctaws and Chickasaws. Now, what did the Government say by article 3? Finally it was agreed that "When allotment time comes we, the Choctaws and Chickasaw Indians, will give them, the freedmen, 40 acres of land each—all persons of African descent, resident in the said nations at the date of the treaty of Fort Smith, September, 1865," which was never ratified. These, substantially, are the words of the treaty:

To them and their descendants, when the time for allotment comes, we will give them 40 acres of land each; to them and their descendants, resident in the Choctaw and Chickasaw country at the date of the treaty of Fort Smith in September, 1865.

Mr. BALLINGER. Did not the Government of the United States compensate the Choctaw and Chickasaws for the cessions made, and did the grant extend to any minor or any descendant born after the treaty was ratified in 1866?

Mr. WARD. It did not, and when we reach the Curtis Act I would like to have somebody ask me about it if I overlook it. The words of the treaty are, "to them and their descendants resident in the Choctaw and Chickasaw country at the date of the treaty of Fort Smith." That treaty was dated September 18, 1865.

Now, then, there is the first time, Mr. Chairman and gentlemen of this committee, that the freedmen were recognized as entitled to share in the benefits of that property. Here are the Chickasaw laws—the 1860 edition, page 79. The act was approved. This was, of course, before the freedmen were recognized, but it shows how these people felt with respect to the freedmen and their right to share in their lands. The act was approved in 1857. It goes on to provide that they can not hold property in the Choctaw and Chickasaw nations. If you prefer, I will have typwritten copies made and sent to the committee, and not read them.

Mr. MCGUIRE. I wish you would.

Mr. WARD. The next act is November 27, 1857.

Mr. STEPHENS. If you would cite all the acts, it would be well.

Mr. WARD. Yes; I will cite them all. They are as follows:

An act prohibiting negroes from holding property.
An act prohibiting negroes from voting, etc.
An act in relation to cohabiting with negroes.
An act amendatory to an act entitled "An act prohibiting negroes from voting and holding office."
An act in relation to free negroes.
An act in relation to free negroes. (Amendment.)
An act in relation to trading with negroes.

AN ACT Prohibiting negroes from holding property.

Be it enacted by the legislature of the Chickasaw Nation, That from forty days after the passage of this act no negro slave in this nation shall own any horse, mule, cow, hog, sheep, gun, pistol, or knife over four inches long in the blade.

Be it further enacted, That should any negro be caught with any property named in the above act it shall be taken from him or them by the proper officer or officers and sold, by order of the court having jurisdiction, to the highest bidder for cash, one half of which shall go to the officer who collects it and the other half shall be paid into the county treasury for county purposes; and the negro shall receive thirty-nine lashes on the bare back by the sheriff or constable.

Be it further enacted, That should any citizen of this nation claim property supposed to belong to a negro he, she, or they shall be cited to appear before the county judge of the proper county, and shall be compelled to testify on oath to the validity of such property. And should any person be convicted of falsely claiming any of the property named in the preceding sections he, she, or they so offending shall be deemed guilty of perjury, and shall be punished accordingly.

Be it further enacted, That if any negro be caught with any spirituous liquors in this nation he, she, or they shall receive thirty-nine lashes on the bare back for every such offense by the sheriff or constable.

Approved November 19, 1857.

C. HARRIS, *Governor.*

AN ACT Prohibiting negroes from voting, etc.

Be it enacted by the legislature of the Chickasaw Nation, That no negro or the descendant of a negro shall hold any office in this nation or be allowed a vote.

Approved, November 20, 1857.

C. HARRIS, *Governor.*

AN ACT In relation to cohabiting with negroes.

Be it enacted by the legislature of the Chickasaw Nation, That from and after the passage of this act all persons other than a negro is hereby prohibited from cohabiting with a negro or negroes, under the following penalties: Any person violating this act shall be compelled to pay a fine of not less than twenty-five nor exceeding fifty dollars and be compelled to separate by the court having jurisdiction; for the second offense the penalties shall be double the above amount.

Be it further enacted, That when said fine is collected one half shall go to the informer and the other to the county treasurer of the county where said case is tried, for county purposes.

Be it further enacted, That any white man living in the nation under a permit or citizen of the United States who shall violate this act shall be subjected to a fine at the discretion of the court having jurisdiction, and forthwith be compelled to leave the nation and forever stay out of the limits of the same.

Be it further enacted, That should the person convicted of the above offense not be able to pay the fine, he or she shall be lodged in the national jail not less than ten days nor more than three months.

Approved, March 16, 1858.

C. HARRIS, *Governor.*

AN ACT Amendatory to an act entitled "An act prohibiting negroes from voting and holding office."

Be it enacted by the legislature of the Chickasaw Nation, That from and after the passage of this act no negro or descendant of a negro shall have any of the rights, privileges, and immunities of citizens of this nation, and shall not be allowed his oath in any of the courts of the nation where any other person but a negro or descendant of a negro is interested.

Be it further enacted, That any law or parts of laws conflicting with this act are hereby repealed.

Approved October 12, 1858. D. COLBERT, *Governor.*

AN ACT In relation to free negroes.

Be it enacted by the legislature of the Chickasaw Nation, That from and after the passage of this act it shall be the duty of the county judge of each county of this nation to order out of the limits of their respective counties any free negro or negroes, and if such negroes fail or refuse to go, two months after the order for their departure was given, it shall be the duty of the county judge to order the proper officers of his county to take such negro or negroes in custody, and after giving fifteen days' notice thereof, in at least three public places in his county, proceed to sell such negro or negroes to the highest bidder for cash, the aforesaid negro or negroes, for the term of one year; and it shall be the duty of the sheriff to sell such property yearly until the negro or negroes agree to leave the jurisdiction of the nation. The purchaser of such property is hereby secured in the title of such property for the aforesaid space of time, as much so as if the negro or negroes were or had been slaves for life.

Be it further enacted, That any moneys arising from the sales of any negro or negroes under this act shall be placed in the county treasury of the county where such negro or negroes was sold for county purposes.

Be it further enacted, That at any time after the aforesaid two months it shall be the duty of the sheriff or constable of the county to take such negro or negroes into custody and to dispose of them as provided for in a previous section of this act, and if such negro or negroes move out of the nation at or before the time prescribed in a preceding section of this act and fail to remain out entirely they may be taken up and disposed of as previously provided for.

Approved October 14, 1858.

D. COLBERT, *Governor.*

AN ACT In relation to free negroes. (Amendment.)

Be it enacted by the legislature of the Chickasaw Nation, That, from and after the passage of this act, it shall be the duty of the county judge of each county of this nation to order out of the limits of their respective counties any free negro or negroes; and if such negroes fail or refuse to go within two months after the order for their departure was given, it shall be the duty of the county judge to order the proper officers of his county to take such negro or negroes in custody, and after giving fifteen days' notice thereof, in at least three public places in his county, proceed to sell such negro or negroes to the highest bidder for cash, the aforesaid negro or negroes, for the term of one year; and it shall be the duty of the sheriff to sell such property yearly until the negro or negroes agree to leave the jurisdiction of the nation; and the purchaser of such property is hereby secured in the title of such property for the aforesaid space of time, as much so as if the negro or negroes had been slaves for life.

Be it further enacted, That any moneys arising from the sales of any negro or negroes under this (act) shall be (put) in the county treasury of the county where such negro or negroes was sold, for county purposes.

Be it further enacted, That, at any time after the aforesaid two months, it shall be the duty of the sheriff of the county to take such negro or negroes into custody and to dispose of them as provided for in a previous section of this act, and, failing to remain out entirely, they may be taken up and disposed of as previously provided for.

Approved, October 14, 1859.

D. COLBERT, *Governor.*

AN ACT In relation to trading with negroes.

Be it enacted by the legislature of the Chickasaw Nation, That from and after the passage of this act all and every person or persons, are hereby expressly prohibited from trading with any negro or negroes, slaves, without a

permit from their owners or the person having him or them in charge: and if any person or persons trade with any negro slave without a permit, he, she, or they shall be deemed guilty of a misdemeanor, and upon conviction thereof shall be compelled to pay a fine of not less than fifteen nor more than forty dollars, at the discretion of the court having jurisdiction of the same.

Be it further enacted, That if any citizen from the United States shall come within the limits of the Chickasaw Nation and trade with any negro or negroes wihout a permit from their owner or the person having them in charge, he or they so offending shall be arrested by the sheriff or constable, or any citizen of the nation, and taken to the United States agent for the Chickasaws and Choctaws, to be dealt with according as the law directs.

Be it further enacted, That when the above fine is collected it shall be placed in the national treasury, for public purposes.

Passed the House October 15, 1850.

JOEL KEMP, *Speaker.*

Attest:

C. HARRIS, *Clerk pro tem.*

Passed the Senate October 15, 1859.

J. KEMP, *President.*

Attest:

J. BROWN, *Secretary of the Senate.*

Approved, October 15, 1859.

D. COLBERT, *Governor.*

Let us see what the Choctaw Nation says about this matter.

Mr. STEPHENS. What year was that?

Mr. WARD. The bill was approved October 30, 1888. It is short and I will read it. It is entitled: "Intermarriage between Choctaws and negroes." It provides (reads):

Be it enacted by the general council of the Choctw Nation assembled, That it shall not be lawful for a Choctaw and a negro to marry; and if a Choctaw man or Choctaw woman should marry a negro man or negro woman he or she shall be deemed guilty of a felony, and shall be proceeded against in the circuit court of the Choctaw Nation having jurisdiction the same as all other felonies are proceeded against; and if proven guilty shall receive fifty lashes on the bare back.

Mr. STEPHENS. That sounds like a Texas law.

Mr. BALLINGER. Mr. Chairman, may I ask one more question? Then I will not interrupt any more. It is admitted, Mr. Ward, that this grant was made under the treaty of 1830, under which the patent issued, is it not?

Mr. WARD. It is not, sir. The land was conveyed by the treaty of 1820. The treaty of 1820 conveyed the land that patent was issued for under the treaty of 1830. The treaty cession of 1820 was perfectly good without a patent. The treaty of 1830 simply conveyed the same lands, "if within the limits of the United States," that were ceded in 1820.

Mr. BALLINGER. Don't you think it would be more appropriate for a constitutional court to determine that question than for the Department you represent to attempt to determine it?

Mr. WARD. The Supreme Court of the United States has determined it in 119 United States, page 38.

Mr. BALLINGER. How long ago?

Mr. WARD. About twenty years ago.

Mr. BALLINGER. What case?

Mr. WARD. The United States against the Choctaw Nation. But I do not want to enter into any acrimonious discussion with you about it. I am talking to the committee, and I did not bother you when you were speaking.

Now, then, going back to the freedmen, it was necessary for the Choctaws and Chickasaws to adopt their freedmen, even before they could be allowed to take 40 acres of land each. The treaty did not even bring them in on the 40-acre basis. They had to be adopted. In 1873 the Chickasaws adopted their freedmen. On January 10, 1873, the Chickasaw Nation passed an act adopting them. It was sent to the President, by him forwarded to Congress, and referred to the Committee on Freedmen's Affairs, not the Committee on Indian Affairs; but no action was taken until August 15, 1894, when Congress passed an act (28 Stat. L., 286) approving the Chickasaw act of 1873, adopting the freedmen.

But in the meantime what had the Chickasaw Nation done? In November, 1885, the Chickasaw legislature passed an act repealing the act of 1873 adopting the Chickasaw freedmen.

COMMITTEE ON INDIAN AFFAIRS,
HOUSE OF REPRESENTATIVES,
March 3, 1908.

The subcommittee on Indian Affairs met at 2.35 o'clock p. m., Hon. Bird S. McGuire (chairman) presiding.

STATEMENT OF GEORGE A. WARD—Continued.

Mr. WARD. Here are the letters I said yesterday I would bring up, and here also is a statement of the exact difference in the wording of the treaties of 1820 and of 1830.

Before going back to the questions involved, in view of the attack that was made on the gentleman designated as "M. M. M." yesterday, who was Major Moore, I feel that I would be derelict in my duty if I did not tell you gentlemen something about that man. He is in his grave and can not answer for himself. I refer to Major Moore, and I want to advise this committee that he was an honorable Union soldier. He enlisted in the war in 1861 when he was but 16 years of age. He was made second lieutenant at the time of his enlistment. Before the war was over he had reached the rank of major. He served through the entire war; he suffered the iniquities of the "bull pen" of Libby Prison for fifteen long months; he was taken from Libby Prison to Charleston, and he and others were used as a breastwork to prevent the bombardment of Charleston by the Union soldiers. He was then taken to Georgia and with others herded in a field like cattle. He escaped and was more than two months in reaching his command, traveling through the snowy mountains in his bare feet. When he escaped he and nine others, for the purpose of throwing the bloodhounds off their tracks, waded through a creek, crossed to the opposite bank, and then traveled along that bank and went back to the water in the depth of winter, and repeated this time and time again for the purpose of getting away from the bloodhounds. Their tracks are filled with blood, and no man ought to come here and villify or assail the name of that honorable man who is dead and can not defend himself.

Mr. BALLINGER. I never assailed the name of Mr. Moore. I objected to the Interior Department following a decision rendered by a

man who was insane at the time he wrote the decision, and which decision pertained to the Cherokee Nation, and not to the nation in which the people claimed their rights to the exclusion of the——

Mr. WARD. That decision is incorrect; I have it here before me. The decision to which the gentleman refers was rendered on the 18th of May, 1906, and in accordance with my agreement of yesterday, I hand the committee a copy, and also a copy of the Department's letter approving it, and a copy of the Department's letter subsequently reconsidering the case on a motion for review, and denying the motion.

Major Moore died July 28, more than two months after the decision, and he was in the hospital, I think—I am not certain about that—I think about two weeks; it may have been a little longer.

Now we will take up the Laura Akin case and dispose of that. Here is an extract from the testimony of Laura E. Akin.

Mr. BALLINGER. Will you permit me——

The CHAIRMAN. I suggest that any questions to be asked shall come up afterwards, and you gentlemen will have an opportunity to speak.

Mr. WARD. She applied to the Commission in 1906. Her testimony was again taken November 23, 1905. This is an extract of her testimony:

Q. You know where the Bill Stephens place is?—A. I know where we lived, and my father owned that place.

Q. Well, it was your father that was an applicant for Cherokee citizenship in 1896, and your application was included in that application?—A. Yes, sir.

Q. And your father's citizenship rights were denied in 1896, weren't they?—A. I do not understand?

Q. Your father's application for citizenship was denied in 1896, was it not?—A. They were rejected; that association that he belonged to.

Here is the decision complained of. I will read just the material part of it:

The record shows that Francis M. Defoe, father of the principal applicant, made application for himself and family, including the principal applicant herein, to the Commission to the Five Civilized Tribes, that the applicant was denied under the provision of the act of June 10, 1896, and no appeal taken therefrom. It is further shown that no application has been made by Laura E. Akin for herself or the minors herein prior to October 31, 1902, and that none of them or any ancestor has been enrolled or admitted to citizenship by any tribal authority of the Cherokee Nation or by any United States tribunal.

Let us see if we did not follow the opinion of the Assistant Attorney-General, even if Major Moore did write the recommendation. I want to correct what I said yesterday. I find that I did initial that letter.

Here is the first opinion that was written on this business. It is by Judge Van Devanter. After discussing all these laws fully, what did he say?

There can be no question as to the effect of this act. It made the Commission's determination as to the names to be enrolled a finality, except where an appeal should be taken to the court, and there the court's decision was declared final. No other tribunal or officer had any authority to revise or change the rolls as prepared by the Commission.

Mr. MORSE. What Commission was that?

Mr. WARD. That was the Commission to the Five Civilized Tribes or the tribal citizenship committee.

The recommendation of the Indian Office in the Laura E. Akin case follows absolutely the opinion of the Attorney-General of March 11,

1899, and our office and the Interior Department stand as firmly by that decision to-day as they did when it was prepared.

Now, do you want me to state our contention?

Mr. MORSE. If you please.

Mr. WARD. Our contention is simply this: That the lands now belonging to the Choctaw-Chickasaw nations were conveyed by the treaty of 1820, and that only persons who were of Indian blood were entitled to full allotments; that the man who is a freedman is only entitled to 40 acres in accordance with the provisions of the treaty.

Now, we will take the act of the Chickasaw council of January 10, 1873:

On January 10, 1873, the Chickasaw legislature likewise passed an act adopting the freedmen of that nation in accordance with the treaty. The act was forwarded to the President, who laid it before the Speaker of the House of Representatives on February 10, 1873. It was referred to the Committee on Freedmen Affairs, but no further action was taken on the subject until August 15, 1894, when the Congress passed an act (28 Stat. L., 286) approving the Chickasaw act of 1873 which adopted the freedmen. Meanwhile, on October 22, 1885, the Chickasaw legislature had repealed that act.

The right of the freedmen to share in Choctaw and Chickasaw lands without compensation to the nations was afterwards passed on by the Court of Claims and the Supreme Court of the United States, which were given jurisdiction of the case by the Choctaw-Chickasaw supplemental agreement. The Supreme Court declared that under the supplemental agreement, "and not independent thereof," the Chickasaw freedmen were entitled to land of the value of 40 acres of the average allottable land, and that the Choctaw and Chickasaw nations were entitled to compensation from the United States for such land in accordance with the agreement. (See 193 U. S., 115.)

Mr. MORSE. One more question. What effect will the passage of this bill have on your contention?

Mr. WARD. It would allow everybody, everyone who has been enrolled as a freedman, if he saw fit to bring suit in the United States circuit or district court for the purpose of determining his rights, if any he has, and it would also let all of the "court claimants" do the same thing, and all persons who have been rejected by the Department, probably including a lot of Mississippi Choctaws who were identified on March 10, 1899, and the law subsequently changed in such way as to exclude them, and the roll on which their names appear was disapproved.

The CHAIRMAN. How many are there of those?

Mr. WARD. I think there were something like 1,923. Of those probably 400 or 500 were identified and given allotments under the subsequent legislation.

Mr. MORSE. That would allow them all to come into court?

Mr. WARD. Yes, sir.

Mr. MORSE. Would it change the law under which the property would be divided?

Mr. WARD. No; I assume that the property would be divided under the supplemental agreement and the act of 1898.

Mr. MORSE. The intention of this bill is simply to give these people one more chance in court?

Mr. WARD. That is the idea—to give them another opportunity.

Mr. MORSE. It does not seek to change the law by which the property would be divided in any manner?

Mr. WARD. I think not.

The CHAIRMAN. Is it your idea that in case this bill passes, as it now provides, those freedmen who have already taken their allotments, their 40 acres, would have an opportunity to or could commence suit under this bill?

Mr. WARD. I think so. It says: "Any person claiming rights in the Choctaw-Chickasaw land." Now, on January 10, 1873, the Chickasaw legislature passed an act adopting the freedmen of that nation in accordance with the provisions of the treaty of 1866. As I told you yesterday, that act was referred or sent up to the President, who referred it to Congress, and it was referred to the freedmen's committee. These freedmen were never adopted by the tribe. The Choctaw freedmen were adopted by the Choctaw tribe. The United States will only pay for the lands allotted to the Chickasaw freedmen. What is given the Choctaw freedmen is a gratuity on the part of the nation; the Government of the United States will have to pay for the lands allotted to the Chickasaw freedmen, because the Supreme Court of the United States (193 U. S., 115), in the case of the Choctaw and Chickasaw nations against the United States, held that the Chickasaw Nation never had been adopted, that they became entitled to rights in the property of the Choctaw-Chickasaw nations under the provisions of the supplemental agreement, the act of July 1, 1902, and in the language of the act, "not independently thereof." Had the allotment gone on, and the agreement of 1902 not been made, but the allotment made under the act of 1898, the Chickasaw freedmen would not have received a foot of land.

Mr. E. P. HILL (representing the Choctaw Nation). There was a question asked if it would change the law. I called Judge Ward's attention to this. It would change the law in this particular, that the law now provides that the freedmen shall receive 40 acres of land, and if this bill goes through they would receive 320 acres of land.

Mr. WARD. They would get a full allotment the same as Indians. It would change the law to that extent.

Now, let us take the act of June 10, 1896, 29 United States Statutes, page 339. That act provides:

That said Commission [meaning the Commission to the Five Civilized Tribes] is further authorized and directed to proceed at once to hear and determine the application of all persons who may apply to them for citizenship in any of said nations, and after such hearing they shall determine the right of such applicant to be so admitted and enrolled: *Provided, however,* That such application shall be made to such Commissioners within three months after the passage of this act. The said Commission shall decide all such applications within ninety days after the same shall be made.

That in determining all such applications said Commission shall respect all laws of the several nations or tribes, not inconsistent with the laws of the United States, and all treaties with either of said nations or tribes, and shall give due force and effect to the rolls, usages, and customs of each of said nations or tribes: *And provided, further,* That the rolls of citizenship of the several tribes as now existing are hereby confirmed, and any person who shall claim to be entitled to be added to said rolls as a citizen of either of said tribes and whose right thereto has either been denied or not acted upon, or any citizen who may within three months from and after the passage of this act desire such citizenship, may apply to the legally constituted court or committee designated by the several tribes for such citizenship, and such court or committee shall determine such application within thirty days from the date thereof.

In the performance of such duties said Commission shall have power and authority to administer oaths, to issue process for and compel the attendance of witnesses, and to send for persons and papers, and all depositions and affidavits

and other evidence in any form whatsoever heretofore taken where the witnesses giving said testimony are dead or now residing beyond the limits of said Territory, and to use every fair and reasonable means within their reach for the purpose of determining the rights of persons claiming such citizenship, or to protect any of said nations from fraud or wrong, and the rolls so prepared by them shall be hereafter held and considered to be the true and correct rolls of persons entitled to the rights of citizenship in said several tribes: *Provided*, That if the tribe, or any person, be aggrieved with the decision of the tribal authorities or the Commission provided for in this act, it or he may appeal from such decision to the United States district court: *Provided, however*, That the appeal shall be taken within sixty days, and the judgment of the court shall be final.

That the said Commission, after the expiration of six months, shall cause a complete roll of citizenship of each of said nations to be made up from their records, and add thereto the names of the citizens whose right may be conferred under this act, and said rolls shall be, and are hereby, made rolls of citizenship of said nations or tribes, subject, however, to the determination of the United States courts, as provided herein.

The Commission is hereby required to file the lists of members as they finally approve them with the Commissioner of Indian Affairs, to remain there for use as the final judgment of the duly constituted authorities.

Take the next act, that of June 10, 1897. About the only thing this act did was to continue the power of the committee and to define the words "rolls of citizenship" as used in the act of June 10, 1896.

We now reach the act of June 28, 1898, generally known as the Curtis Act. Section 21 of that act says that this Commission shall make correct rolls of all Choctaw freedmen entitled to citizenship under the treaties and laws of the Choctaw Nation, and all their descendants born to them since the date of the treaty of 1866. You see that is where the descendants born since September 18, 1865, come in. If you remember, the treaty provides "to them and their descendants at the date of the treaty of Fort Smith." This is the act giving to the persons born of Choctaw freedmen since that time property rights. Had it not been for those few words there they would not have shared. What does it say about the Chickasaw freedmen?

It shall make a correct roll of the Chickasaw freedmen entitled to any rights or benefits made under the treaty of 1866 between the United States and Chickasaw tribes and their descendants born to them since the date of said treaty, and 40 acres of land, including their present residences and improvements, shall be allotted to each, to be selected and held by them until their rights under said treaty shall be determined in such manner as shall hereafter be provided by Congress.

Congress afterwards directed, by the supplemental agreement, that suit be brought to test their rights, and an appeal to the Supreme Court of the United States was authorized. The court decided in favor of the Choctaw freedmen, and held that the Chickasaw freedmen became interested by reason of the provisions of the act of 1902, and the Court of Claims in entering up the decree declared the amount the United States should pay the nation for the land given to the Chickasaw freedmen would be hereafter determined. As I have shown you, this act required us to respect the laws, usages, rolls, and customs of the tribes. The records show that it has been the custom of those two tribes, the universal custom, to enroll the children with the mother; the children of a freedmen mother and an Indian father are enrolled as freedmen. The child of an Indian mother and a freedmen father is enrolled as an Indian. That practice was followed by the Commission and the Department.

In February, 1907, Bishop W. B. Derrick memorialized the President and asked that he send a certain bill to Congress authorizing the transfer of any name from the freedmen to the blood roll of any person who was in part of Indian blood. Our office was asked for its views as to sending the papers to the Attorney-General for opinion. We had no objection, and were glad to have the opinion. Here is what he said. His opinion is dated February 27, 1907. He goes into the subject very fully, and concludes:

To hold that descendants of Indians and negroes who were always recognized by the tribal authorities as freedmen, and never as citizens, are entitled, simply because of their Indian blood, to be placed upon the rolls of citizens, would be entirely inconsistent with the previous action of the Government in this matter and in complete disregard of the rolls, customs, and usages of the tribes. There would be no end to the claims that could be made if everyone who had some Choctaw or Chickasaw blood was to be deemed a "descendant," within the meaning of the treaty of 1830, without regard to tribal recognition and enrollment or to the legitimacy of his "descent."

* * * * * * *

The Government has been for more than ten years engaged in the work of allotment of Indian lands and enrollment of Indian citizens among the Five Civilized Tribes; it has given every class of claimants to these privileges every reasonable opportunity to assert their claims, and to thus overturn its whole system and policy at the very last moment to let in these claimants would be, in my opinion, both inexpedient and unjust. I advise that you do not recommend legislation referring such claims to the Court of Claims or otherwise recognize them.

Mr. BALLINGER. Does not the Attorney-General in the same opinion state that these same people probably had rights there, but they are guilty of laches?

Mr. WARD. I can not say without having the opinion before me.

Mr. MORSE. Will the passage of this bill change the rights of these parties?

Mr. WARD. It would change the right to this extent: Suppose here is A. B. enrolled as a freedman. He comes into court, and we will say, for the sake of the argument, that the court decides that he is entitled to enrollment as an Indian. Instead of getting 40 acres of land, he will get a full allotment of 320 acres of average land, and he will share in the funds, if the court decides that he should be enrolled as an Indian.

Mr. MORSE. Ought he not to be enrolled as an Indian?

Mr. WARD. Not unless the present legislation of Congress is changed, because Congress said "to follow the laws, usages, and customs of the tribe," and that is exactly what we have done.

Mr. MORSE. Is not the court to be governed by the laws of Congress?

Mr. WARD. I assume it would be.

Mr. MORSE. Then it would simply give the people a chance, as I understand, to be heard in court.

Mr. WARD. They have already had their chances, in 1896 and in 1897 and in 1898, and then again under the supplemental agreement.

The CHAIRMAN. I think Mr. Morse had reference to the fact that this bill gives him a right to be heard regularly in the Federal courts. I think, if I understand, there are only a part of them that have ever been before the Federal courts to have the questions of law of their cases passed on. They have been before the constituted courts for specific purposes. Only part of them have been before the Federal

court. If I am wrong, you will correct me, and my impression is that the tribal court threw out a number of those cases on which the Federal court had passed. Am I right about that?

Mr. WARD. Oh, no; you mean the citizenship court.

The CHAIRMAN. The citizenship court?

Mr. WARD. Oh, yes; on which the courts in the Indian Territory had passed.

The CHAIRMAN. The Federal court?

Mr. WARD. The Federal court of the United States.

The CHAIRMAN. I will say this frankly to you, the stickler in this case to me is that I can not reconcile myself to the idea that this citizenship court should throw out a number of cases where the Federal court, an ultra vires Federal judge, had passed upon the law and the evidence in reference to that case.

Mr. WARD. I will explain that to you. I just want to file some citations in reference to the decisions of courts defining the word "negro:"

A person having one-fourth of African blood is not a white person, but a mulatto or negro. (Gentry *v.* McMinnis, 33 Ky. (3 Dana), 382, 385, 386.)

"Negro," as used in acts 1877–78, chapter 7, section 8, providing that any white person who shall intermarry with a negro, and any negro who shall intermarry with a white person, shall be punished, etc., does not mean only a full-blood African, but is synonymous with "colored person" as used in Code, chapter 103, section 2, providing that every person having one-fourth or more of negro blood shall be deemed a colored person. (Jones *v.* Commonwealth, 80 Va., 538, 542.)

By statute in Alabama, negro embraces all descendants of a negro to the third generation, though one ancestor of each generation should be a white person. (Linton *v.* State, 88 Ala., 219.)

In North Carolina it has been held that a negro is a person having in his veins one-sixteenth or more of African blood. (State *v.* Chavers, 5 (N. C.), 11; State *v.* Watters, 3 (N. C.), 455; State *v.* Melton, (N. C.) 49.)

In People *v.* Hall (4 Cal., 403) it was said: "The word 'black' may include all negroes, but the term negro does not include all black persons."

The next act on this subject, that of July 1, 1898 (30 U. S. Stat., pp. 571, 591).

That act, so far as is material here, reads as follows:

Appeals shall be allowed from the United States courts in the Indian Territory direct to the Supreme Court of the United States to either party, in all citizenship cases, and in all cases between either of the Five Civilized Tribes and the United States involving the constitutionality or validity of any legislation affecting citizenship, or the allotment of lands, in the Indian Territory, under the rules and regulations governing appeals to said court in other cases: *Provided*, That appeals in cases decided prior to this act must be perfected in one hundred and twenty days from its passage; and in cases decided subsequent thereto, within sixty days from final judgment; but in no such case shall the work of the Commission to the Five Civilized Tribes be enjoined or suspended by any proceeding in, or order of, any court, or of any judge, until after final judgment in the Supreme Court of the United States. In case of appeals, as aforesaid, it shall be the duty of the Supreme Court to advance such cases on the docket and dispose of the same as early as possible.

In a number of cases appeals were taken directly to the Supreme Court of the United States from the Indian Territory courts in 1896, under act of June 10, 1896. The Supreme Court did not touch on the two questions involved in the test suit in the citizenship case. It had no power to touch on those questions, provided it followed the legislation. True, this is a constitutional court, has the right to define its own jurisdiction, and its jurisdiction is defined by the

Constitution, and there may be some question about whether Congress could limit its jurisdiction, but Congress did do it, and the Supreme Court followed the action of Congress and limited its decision to the constitutionality of the legislation, and touched nothing else.

174 U. S., page 445, Stevens against Cherokee Nation. Here the court said, after referring to various decisions of the courts in the Indian Territory——

The CHAIRMAN. Federal courts, do you mean?

Mr. WARD. Federal courts for the Indian Territory.

Mr. MORSE. Were any of these judgments set aside by this tribunal?

Mr. WARD. Yes; and that, too, was sustained by the Supreme Court of the United States. I will reach that in a few moments.

I wish now to refer to what is known as the "court claimants." While it is necessary for Mansfield, McMurray's, and Cornish's name to enter more or less into this discussion, I want it distinctly understood that it is no part of my duty to defend them, and I do not want to be understood as doing it, nor the citizenship court, either. I know nothing about the charges that are being made.

Mr. MORSE. Admitting, for the sake of the argument, that the citizenship court referred to here was as corrupt as is charged, ought these claimants to have some redress?

Mr. WARD. The first thing is to prove it was corrupt. That is the first thing to do. Charges are very easily made, but proof is another thing.

Mr. MORSE. But if it were proven to the satisfaction of this committee that this court was corrupt, would it not be the duty of this committee to see that these people shall have their day in the United States court?

Mr. WARD. Of course if anybody was cut out by a corrupt court, he should be given an opportunity to be heard. Nobody will deny that, but the first question is to prove that the court was corrupt.

Mr. MORSE. Then the question recurs, as I asked you a few minutes ago; it becomes your duty then to defend that court, does it not?

Mr. WARD. It does not.

Mr. MORSE. In order to sustain your contention?

Mr. WARD. It does not; because the Supreme Court of the United States has passed on the question, and there is not a scintilla of evidence to show—there is not a scratch of a pen in our office, or anywhere else on the face of the earth that I know of, to show that that court was corrupt. If anyone can prove that that court was corrupt, let him come to the Interior Department and do so, and I have no hesitation in saying that in my opinion Mr. Garfield will be the first to go to Congress and say, "Here, let us correct this thing." But he can not take it up on charges and flimsy excuses.

Under the act of June 10, 1896, the Commission to the Five Civilized Tribes, and each tribe, could have and did have their own citizenship committee. The citizenship committee of the tribe had the same power to admit to citizenship that the Commission to the Five Civilized Tribes had. An appeal from either to the United States court in the Indian Territory would lie. But an appeal from one to the other would not lie. Their jurisdiction was equal.

Many appeals were taken to the United States courts, and in some instances the decision of the citizenship court or of the Commission was reversed and the person admitted. As I have shown you, these cases were frequently appealed to the Supreme Court of the United States and the constitutionality of the legislation passed on, and that was the only thing that was touched on.

Now, the act of June 28, 1898, provided, among other things, section 21.

By section 33 of the act of July 1, 1902, the supplemental agreement, the citizenship court was created. Its duties and powers were defined by sections 31 and 32, and possibly 34 of that act. The tribes were authorized to bring suit in the citizenship court, a test suit, known as the J. T. Riddle case. Ten persons were to be made defendants, and the language of the law is that if the decision of the citizenship court in the test suit was favorable to the nations, then all of the judgments rendered by the United States courts in 1896 should, by reason of that judgment, become null and be vacated. The action of the court, holding that the contentions of the nations were correct, vacated all of the judgments, and then it was provided by the act that, "in the event the citizenship judgments or decisions were annulled or vacated in the test suit hereinbefore mentioned because of either one or both of the irregularities claimed and insisted upon by the nation as aforesaid, then the files and papers and proceedings in any citizenship case in which the judgment or decision is so annulled or vacated shall, upon written application therefor, when made within ninety days thereafter,"—by whom?—"by the party thereto," the applicant, "who is thus deprived of a favorable judgment upon his claimed citizenship, be transferred and certified to said citizenship court, the court having custody and control of said files, papers, and proceedings, and upon the filing in said citizenship court of the files, papers, and proceedings in any such citizenship case, accompanied by due proof and notice in writing that the transfer and certification thereof has been given to the chief executive officer of each of said nations, said citizenship case shall be docketed in said citizenship court and such further proceedings shall be had therein" in that court as ought to have been had in the court to which the same was taken on appeal from the Commission to the Five Civilized Tribes, and as if no judgment or decision had been rendered therein.

The two questions involved were, first, Was it necessary to give both nations notice? That is, should the applicant have had service on the chief executive of the Choctaw Nation and the chief executive of the Chickasaw Nation in 1896 that his case was pending in the United States court? They only served one executive. The citizenship court held that that was necessary. Secondly, the point is, Did the court in 1896 have power to try a case de novo, or should it have passed on the record as made before the Commission to the Five Civilized Tribes or the citizenship committee? The court sustained the contention of the nations on both points, and said that the case should not have been tried de novo in 1896. Consequently every decision that has been rendered by the United States courts in 1896 were wiped out by this decision in the test suit, and it then became incumbent on the applicants to have the records in their cases transferred to the citizenship court, and there have their case reheard.

Now, I think there were about 3,400 persons whose cases were tried by the citizenship court, and that of that number something like 2,900 were rejected. I am not certain about these figures. This is simply from memory and I have not had the time to look them up in the annual report. In connection with this subject, I want to invite your attention to a decision in the Supreme Court of the United States in ex parte U. S. Joins. You see the Supreme Court of the United States had several whacks at this business, and there has never been a time that said court has held the legislation unconstitutional. Joins had the record in his case transferred to the citizenship court. Then he came here to the Supreme Court of the United States and filed an application for a writ of prohibition and certiorari. That case will be found in 191 United States (p. 93). The court said:

It is stated correctly by the answer that the act does not empower the citizenship court to do anything in the test case beyond rendering its judgment and certifying the same, as it has done. This being so, there is nothing which this court could prohibit, even if it were of opinion that the petitioner made out a good case on the merits, which we do not intimate. Therefore the writ must be denied.

In 1904 the Commission to the Five Civilized Tribes took the position that when the citizenship court wiped out the judgments rendered in 1896 and applicants did not have their cases certified to the citizenship court, that that ratified their decisions of 1896, and they passed the following resolution:

Resolved, That the status of these applicants—

Choctaw and Chickasaw—

in whose cases appeals to the Choctaw and Chickasaw citizenship court have not been taken, be considered by the Commission without reference to any action by the United States court in Indian Territory or by the Choctaw and Chickasaw citizenship court, and that the original judgment as entered by the Commission to the Five Civilized Tribes in 1896 be held valid and in full force and effect.

Now, under section 32 of the act the nations could have taken these people into court if they wanted to. But they were not compelled to. But the applicant was, under the law, compelled to take his case to that court. There was considerable correspondence about the subject between our office and the Department and the Commission, and it was finally submitted to the Attorney-General, who, on May 9, 1904, rendered a very exhaustive opinion, and I will quote from it briefly:

Any applicant deprived of a favorable judgment of the court by the decree in the test case has a right, within the time specified, to transfer his cause into the citizenship court and have the issues finally determined; but no right or transfer under such circumstances was given to the Indian.

The Indians could not transfer the case. They could only take the fellow into court, and the court would have the power to order the transfer of the record.

Where an applicant was admitted by the Commission and upon appeal such action was affirmed, and thereafter the decree of the United States court was declared null and void in the test case, the nations *could not* transfer the cause to the citizenship court; and if, as now claimed, the annulment ex proprio vigore gave efficacy to the appealed-from action of the Commission, then—the other parties being powerless to act—simple inaction by the applicant would

have perfected his right to citizenship, and the Indians, by prevailing in the test case, would have accomplished nothing.

In other words, to have followed the position taken by the Commission the fellow who went before the citizenship court and lost was cut out by going there, but the fellow who did not go there the decision of 1896 let him in. The Indians had no right to transfer a case, and, of course, under the conditions contended for by the Commission, the applicant would not have done so. Mr. Attorney-General further said:

I am of opinion that annulment of the United States court judgment affirming a favorable decision of the Commission to the Five Civilized Tribes upon an application for citizenship so far deprived the applicant of a favorable judgment as to devolve upon *him* the duty of causing his cause to be transferred to the citizenship court. I am further of opinion that annulment of the United States court judgment did not revive and put into force and effect the judgment of the Commission to the Five Civilized Tribes admitting such person to citizenship, and that enrollment by the Commission, based upon such a theory, would be a clear violation of the rights of the Indian nations.

Now, we have been to the United States court on the question of this legislation. Take the case of Wallace *v.* Adams (204 U. S., 415). That was a suit in ejectment brought in the United States court for the southern district of the Indian Territory in September, 1904, to recover possession of certain lands.

The court rendered judgment in favor of the plaintiffs. This judgment was sustained by the United States court of appeals for the Indian Territory and also by the United States court of appeals for the eighth circuit.

The Supreme Court syllabus said:

The power of Congress over citizenship in Indian tribes is plenary; it may adopt any reasonable method to ascertain who are citizens, and if one method is unsatisfactory it can try another; nor is its power exhausted because the first plan is by inquiry in a Territorial court. The functions of a Territorial court in such a case are those of a commission rather than of a court.

The act of July 1, 1902 (32 Stat., 641), creating the Choctaw and Chickasaw citizenship court and giving it power to examine, and in case of error found to annul judgments of courts of Indian Territory determining citizenship in the Choctaw and Chickasaw nations, was a valid exercise of power.

Congress has power to provide for the bringing of a suit in regard to citizenship in Indian tribes in a court of equity in which every class to be affected shall be represented, and that those not actually made partes but who belong to the classes represented shall be bound by the decree.

Citizens are bound to take notice of the legislation of Congress.

143 Fed. Rep., 716, affirmed.

Is it the contention of the people who are offering this legislation that this former legislation was unconstitutional or do they question the power of Congress to enact? Are they questioning the power of Congress to enact it or are they questioning the wisdom of the legislation itself?

Mr. MORSE. I can not see your reason for citing these opinions.

Mr. WARD. The action of the Government in enrolling these people in accordance with the laws, usages, and customs of the tribes is challenged. They say it was not right—that the law was not right.

Mr. MORSE. Not from a legal, but from an equitable standpoint.

Mr. WARD. I understand not only from equitable but from a legal. Now, with reference to the contract of Mansfield, McMurray, and Cornish, I would like to inquire of the committee if they understand

that our Department in any way had anything to do with the payment of that big fee or anything of that sort?

Mr. MORSE. The court allowed the fee, did it not?

Mr. WARD. Yes.

Mr. MORSE. The same court?

Mr. WARD. The citizenship court.

Mr. MORSE. The same court whose good faith they are questioning?

Mr. WARD. Yes; it was allowed by the citizenship court, and I will say that the Interior Department had nothing whatever to do with it; that when that contract was submitted for approval it was approved for not exceeding $250,000 in the aggregate, and the attorneys were required to accept it as approved. They refused to do so, and they came to Congress and got through a law authorizing the citizenship court to fix their fee. Now, it is not a part of my duty to defend Mr. Beall, but in order that the committee may know the facts in the case, Mr. Beall was not discharged; he resigned.

The CHAIRMAN. Was he a member of the citizenship court?

Mr. WARD. Oh, no. The members of the citizenship court were Judges Adams, Foot, and Weaver.

The CHAIRMAN. Mr. Beall was a member of the Commission?

Mr. WARD. No; he was an employee.

Mr. MORSE. Mr. Beall was a member of the Dawes Commission.

Mr. WARD. No; he was an employee of the Dawes Commission and was secretary to the Commission for a time, and afterwards secretary to the Commissioner, Mr. Bixby, and was Acting Commissioner when Mr. Bixby was away.

The CHAIRMAN. My understanding of the contract, and the relation of the Interior Department to the contract with Mansfield, McMurray, and Cornish, as you stated, it was only recommended for a sum not to exceed $250,000, and a judgement was obtained in a fight through the court, and the Interior Department was opposed to their receiving more than $250,000.

Mr. WARD. Yes; as I recollect it. Of course I only know what I heard about it, and I think Secretary Hitchcock tried to prevent the payment of the amount.

Now, with reference to Mr. Beall, I have here a copy of a letter, which is dated January 25, 1906, but it should be 1907. That is a clerical mistake. It was received in our office January 28, 1907.

THE COMMISSIONER TO THE FIVE CIVILIZED TRIBES, MUSKOGEE, IND. T.

SIR: Changes in the personnel of your employees under act of Congress approved March 3, 1905 (33 Stats., 1060), are hereby approved as follows: Resignation: William O. Beall, of the District of Columbia, secretary to Commissioner, at $2,500, effective January 31, 1907. Reported January 18, 1907.

E. A. HITCHCOCK, *Secretary.*

That is all I have to say.

Mr. MORSE. What appeal did the claimant have from the citizenship court?

Mr. WARD. None. Its decision was final.

Mr. MORSE. And this was the court that allowed this firm of attorneys this fee?

Mr. WARD. Yes, sir. And the judges of that court were appointed by the President under the authority contained in the act of July 1, 1902.

STATEMENT OF WEBSTER BALLINGER—REPLY.

Mr. BALLINGER. Mr. Chairman and gentlemen of the committee, we are very glad, indeed, that you have had an opportunity to-day to hear the interpretation of the law as we get it from the Indian Department. We object to that interpretation, and ask the common privilege of going into the courts and there have our cases passed upon in a judicial manner and by a judicial tribunal.

The treaty under which we claim gave to these people an absolute property right. It did not limit the property right to the person of mixed Indian and white blood, nor to the full blood, nor to any particular person, but gave the property to the person who was either a member of the Choctaw community in 1830 or who was a descendant of any such member. It has been contended up to to-day that the departmental officers were compelled by law to follow the tribal laws and customs in determining who were entitled to share in this trust property.

The constitutions of the two nations provided that no law should be enacted by either the Choctaw or the Chickasaw nations or the legislatures thereof that was in conflict with the Constitution, treaties, and laws of the United States. By this treaty of 1830 and the grant in 1842 an absolute property right passed to every member of the community. That property right could not be restricted by any tribal custom or tribal law, and it is fallacy to talk about such a thing. But the Supreme Court of the United States and the Court of Claims has likewise determined that question in a case in which you, Mr. Ward, undertook to impose upon another class of people a similar holding. What did the court say to you in that case? I read now from the case of the New York Indians *v.* United States (40 Ct. Claims), in which they attempted to follow a tribal custom and provide that the descent should be from the mother only; that if a full blood married a white woman his children were excluded. And if his son intermarried with a white woman his children were excluded, and the court says:

> The United States were not interested in academic questions of Indian blood or Indian citizenship. Whether an Indian family of half bloods residing on an Indian reservation in the State of New York or the State of Wisconsin were children of white men or of white women was, for the purposes of the contract, abstract and irrelevant. That one such family should be called Indian and be allowed to go to the West to acquire lands of the United States, but that the other should be called white and not be allowed to go or to acquire lands, would be an incongruity utterly foreign to the intent of the agreement.
>
> It is true that with the Iroquois, as with almost all Indian tribes, descent was through the mother. The Iroquois woman was the daughter of the tribe unchangeably, irrevocably. She could not marry within the tribe, for all who were born of the daughters of a tribe were brothers and sisters. When she married it was her husband who came to dwell in her tribe, and not she who passed over to his. If she married a white man she might live in his house and home, but when he died she could return to her kindred. Maid, wife, or widow, the Iroquois woman was always a daughter of her tribe, and her children were sons and daughters of her tribe; and they, with the sons and daughters of her tribal sisters, alone could be members of her tribe by birthright. Therefore it was that the daughters of the tribe were the mothers of the tribe, and they only. No man could be a son of the tribe unless he was a son of a daughter of the tribe. The Indians, therefore, held that as a white woman was not the daughter of a tribe, she, on the death of her husband, had no tribe; that she was what she had been—a stranger, an alien, an

outcast, and not an Indian. It followed that her children were what she was, exiles without a tribe, and strangers, not of Indian blood.

This was the logical, inexorable result of Indian law; but the practical results which would come from attempting to carry out the purpose of the treaty according to this Indian law, instead of according to the manifest purpose of the contracting parties, is well illustrated in a case stated by claimant's counsel. A full-blooded Seneca Indian married a white woman. The daughter of that union was in fact one-half Indian, but according to Seneca law wholly white. She married a full-blooded Seneca, and her daughter, three-fourths Indian, was still, by Seneca law, wholly white. Her daughter, three-fourths Indian, married a full-blooded Seneca, and her daughter, seven-eighths Indian, was still, according to Seneca law, wholly white. Finally, the children of this woman, though their father might be a full-blooded Seneca Indian and they have fifteen-sixteenths Seneca blood in their veins, would still, in Indian legal estimation, be wholly white.

The court then disposed of this whole question, and held that to be a fallacy; that the people who are members of a community, regardless of Indian custom or Indian tribal law, were members of that community and entitled to participate in the tribal property, and decreed that the only test should be that the person claiming should be a descendant of an ancestor who was a member of that Indian community when the treaty was made. I believe in 1898 the laws which Congress enacted were unwise in one respect. They made property rights in these nations dependent upon citizenship. I will not say they made it, but they provided that the enrollment of persons at that time should be the enrollment of citizens of the tribe.

Now, Mr. Chairman, citizenship can not control property rights in a tribe with property held as this property was. This was a grant absolutely from the United States to these people in fee simple. If the United States held the title, or if the United States had any interest in the property, the contention of the Indian Office might be correct, but if the title to this land passed absolutely in 1830, and certainly by the grant in 1842, from the Government, and from that time to the present moment no Government officer, no court, or anyone else has ever claimed that the Government of the United States had any title to it or any rights in it, except the right to see that this trust was administered in strict conformity with the terms and provisions of that grant, then the holding was erroneous. The Congressional legislation enacted directed this Commission to follow the treaty, and Mr. Ward, who has just preceded me, well knows that to be the fact. The act of 1896 directed that Commission to do this:

And said Commission is directed to continue the exercise of the authority already conferred upon them by law and endeavor to accomplish the objects heretofore prescribed to them and report from time to time to Congress.

That said Commission is further authorized and directed to proceed at once to hear and determine the application of all persons who may apply to them for citizenship in any of said nations, and after said hearing they shall determine the right of said applicant to be so admitted and enrolled: *Provided, however*, That such application shall be made to such commissioners within three months after the passage of this act. The said Commission shall decide all such applications within ninety days after the same shall be made. That in determining all such applications said Commission shall respect all laws of the several nations or tribes, not inconsistent with the laws of the United States, and all treaties with either of said nations or tribes, and shall give due force and effect to the rolls, usages, and customs of each of said nations or tribes: *And provided further*, That the rolls of citizenship of the several tribes as now existing are hereby confirmed, and any person who shall claim to be entitled to be added to said rolls as a citizen of either of said tribes and whose right thereto has either been denied or not acted upon, or any citizen who may within three months from and after the passage of this act desire such citizen-

ship, may apply to the legally constituted court or committee designated by the several tribes for such citizenship, and such court or committee shall determine such application within thirty days from the date thereof.

Mr. Chairman, that placed the treaties with these tribes paramount to any tribal law, and yet the Department insists upon following the tribal laws and tribal customs as against the provisions of that treaty. We object to such an interpretation of the law as that by your Department. We shall continue to object to such an interpretation of the law as that, and we shall never stop until we secure the enactment of some legislation that will enable us to go into a court and permit that court to determine the construction of the law and thereby determine our property rights.

Now there has been a dissertation upon the decisions of the Supreme Court in these cases. Mr. Chairman, in neither the Stephens case nor in the Joins case, nor in any other case passed upon by the Supreme Court has the question of the property rights of these people ever been determined. In every case it was a question of citizenship—a political question that Congress could deal with—but never in any case has the court passed upon the question of property rights, and Mr. Ward, you well know that to be the fact. The first time that question was ever raised, Mr. Chairman, myself and my associate raised it in a case that is now pending in St. Louis. Your officers, or the officers of the Department, met us at the threshold of the controversy with a challenge to the jurisdiction of the court. You were afraid to permit us to go into a court; you know well what the judgment of that court will be.

The CHAIRMAN. Just one question. There is some sort of a case now pending; I do not know anything about the contents of the petition or the allegations, with reference to the property rights of these people.

Mr. BALLINGER. There is a case styled "Bettie Ligon et al. *v.* D. H. Johnson et al.," that is now submitted to the circuit court of appeals at St. Louis.

The CHAIRMAN. Briefly, what is the nature of that case?

Mr. BALLINGER. That case runs to the rights of those persons of mixed Indian and negro blood who were arbitrarily and against their protest enrolled as negroes and who have been arbitrarily and against their protest allotted lands as negroes. Many of them refused to take their allotments, and they contend that they have been enrolled arbitrarily as freedmen and have been allotted arbitrarily certain lands as such. They have refused to take them. Patent after patent has been sent to these people. We have returned these patents to the Commission, and our clients have returned to the Commission numerous patents that you have sent through the mails to these people endeavoring to get them to take them. They have refused, and they will continue to refuse until some court passes upon their rights.

The CHAIRMAN. It is your contention that you can not have this relief except through legislation of this kind—that is, you can not gain these cases?

Mr. BALLINGER. We can not for a certainty. The condition in Oklahoma is such that these questions must be settled, and they must be settled soon, otherwise this property will practically be confiscated. It can not be held intact much longer. There must be relief

from it in some way, and while I believe that under existing law, by reason of the nature of this title, we have a remedy in court, I want legislation that will settle it; that will stop these administrative officers from challenging the jurisdiction of every court and making us come here to the Supreme Court of the United States on a preliminary motion, viz, a demurrer to the jurisdiction of the court.

The CHAIRMAN. That is what I wanted to get at. I want the particular point of advantage in this bill.

Mr. BALLINGER. This bill, if enacted, will solve these questions. If these people have no rights it will quickly be determined. A few suits under this bill will determine the rights of these parties, if they have rights, and it will put an end to this controversy, which if allowed to run along, will put that country in a turmoil of litigation for years to come. No man can prophesy the end of it. And, Mr. Chairman, I appeal to you in the interests of these people we represent, to give them an opportunity to go into the courts and have their rights judicially determined. They have never been before any court. They never will get a judicial determination of their rights if it is left to the administrative officers. Their judgments in their opinion are infallible; there can be no mistake; they are final, and they object to us even raising a question about the accuracy of those judgments. They object to us going into a court to test them. Mr. Chairman, I submit with all seriousness to this committee that the condition existing there is outrageous. It ought not to be tolerated, and surely this committee will not permit it to continue longer. If you have the power to consummate this wrong you would not do it, because your own instincts of fairness and justice would preclude that. Give us an opportunity to go into the courts; give us an opportunity to determine the rights of these people. That is all they ask. You have given it to every other person within this land but these people. Why deny it to them?

Mr. STEPHENS. About how many persons do you think were taken off the rolls by this citizenship court?

M.r BALLINGER. Over 4,000.

Mr. STEPHENS. I would like to inquire whether or not any of these people will lose their homes, and if so, how long have they been living in these homes?

Mr. BALLINGER. They were enrolled by judgment of the courts, rendered in 1897 and 1898, and I am not certain but what as late as 1899. They selected their lands and went into possession of their land; many of them spent everything in the world they had in improving these lands. Then came this unique legislative court that upset the judgments of the United States courts, and now these people, while holding the possession of their land, hold them against the protest of the Department, and will continue to hold them, Mr. Chairman, unless they are shot down and carried off by the administrative officers.

Mr. STEPHENS. Was the land allotted to the person?

Mr. BALLINGER. That same land that these people selected and upon which they have made their homes has been allotted to other persons, and they hold the legal title by patent issued by the tribal officials and approved by the Secretary of the Interior.

The CHAIRMAN. You recognize that under the law and the testimony these people were intruders. For instance, if I would go on an Indian reservation and under color of right improve a farm, when

the time came for allotment and distribution or dividing up of the common property of the tribe, if it was found that I was not entitled to receive a share with the members of the tribe, the mere fact that I had expended money and labor would simply raise as a kind of sentiment. If any person there has made improvements, if he knew they were wrongfully made, then it is only a question of sentiment. If he has gone there rightly and made his improvements, of course then he should have his rights.

Mr. BALLINGER. I have never yet raised my voice in behalf of any person who was claiming something he was not entitled to. These people went there under judgment of the district court in Oklahoma.

Mr. STEVENS. Under acts of Congress?

Mr. BALLINGER. Under acts of Congress, which provided that the decisions of these courts should be final. There may have been some fraud that entered into some particular case, but, Mr. Chairman, in the great majority of those cases the judgments of the district courts were not obtained by fraud.

The CHAIRMAN. I was only assuming a case. I was not undertaking to say anything about whether they had or had not. I was assuming a case where parties may have gotten in and made claim under color of title to the tribal advantages, and because of this claim of tribal rights had made certain improvements.

Mr. BALLINGER. I think in that case he went there at his own peril. But these people were children of the signers of the treaty of 1830. I have one case that I referred to here, John T. Williams, who lives at Swink, Okla. Ambrose Williams was his father, and signed the treaty of 1830 and his name appears upon that treaty. And he is only one person who is stricken down by the judgment of this citizenship court.

Mr. STEVENS. Has he lived in the country all the while?

Mr. BALLINGER. He has lived there for years and years, was a bona fide resident in 1898, and has always been recognized as such, and he and his children are interpreters for the Choctaws. These people have been recognized by the tribal authorities, but the recognition of the tribal authorities under the law amounted to nothing. I appeal to you gentlemen to afford these people some kind of relief.

STATEMENT OF MR. JAMES POOLE.

Mr. POOLE. I only wish to call the attention of the committee to the fact that from the manner in which this thing has been argued it would appear that there was no one concerned in this bill except the people who had had some show in court. I represent Indians, I don't represent court citizens. I don't represent niggers, I don't represent half-breeds, but I represent Indians. The persons denied citizenship by the Commission to the Five Civilized Tribes have never been in a court in their lives. This bill takes them in. Born and raised in the Indian Territory, some of them seven-eighths Choctaws, some of them half-breeds, their parents brought there by the Government years ago, and they are there yet. I have that class of people, who have not been mentioned. I just wanted to call your attention to the

fact that this class of people are included in this bill as well as those others.

Mr. STEPHENS. For what reason have they been excluded?

Mr. POOLE. God only knows.

Mr. STEPHENS. Have they made application?

Mr. POOLE. Yes; we have made application.

Mr. STEPHENS. Who rejected them?

Mr. POOLE. This Commission and the Department up here.

Mr. STEPHENS. For what reason?

Mr. POOLE. We filed motion after motion asking, and I have never got a reason yet, and the only thing they say is that the testimony is insufficient to identify them as Mississippi Choctaws, and they refuse to pass upon them as Indians.

Mr. WARD. Are you not aware that many of them were rejected in 1896 and Congress passed an act providing that the Commission to the Five Civilized Tribes should continue to exercise the same authority as it had formerly and that it should enroll only persons whose names appeared on some roll of the tribe, and, furthermore, there was a time limit within which they could make an application?

There was no provision for new applications after 1896. Now, we tried to correct that, the committee of which I was a member, who drew the act of April 26, 1906. We tried to correct that by providing that any person who had applied prior to December 1—possibly December 31, 1905—do you remember, Mr. Ballinger?

Mr. BALLINGER. I don't know what act you refer to.

Mr. WARD. Act approved April 26, 1906. that any person who had applied prior to December 1 or 31, 1905, might have his application considered.

Mr. BALLINGER. What act of Congress provided that no person should be enrolled unless recognized by the tribal authorities?

Mr. WARD. The act of May 31, 1900.

Mr. BALLINGER. In the act of 1898, under which we are proceeding, no application was made. The Commission was directed to go out and beat the bush and corral them.

Mr. WARD. The Assistant Attorney-General holds otherwise. He holds that an application was necessary, and that the law of 1898 did not provide for new applications.

Mr. STEPHENS. Mr. Ward, do you think that on such cases as this gentleman has stated here, men who have been known to be Indians for life, born and raised there, and have lived there all their life, that by act of Congress or courts or anyone else they should be deprived?

Mr. WARD. They have had their day in court. They have had a chance to prove up.

Mr. STEPHENS. Did you ever know of any chancery court on earth that would deprive the heirs of their rights of inheritance because that heir had not prosecuted his claim sooner?

Mr. WARD. Oh, they did prosecute their claim.

Mr. STEPHENS. Wasn't it the duty of the Government to find out the heirs?

Mr. WARD. The Government did everything in its power. The Commission sent out field parties and tried to locate them.

Mr. STEPHENS. Here is a gentleman who says they have been doing everything they can for years to get on the rolls.

Mr. WARD. What class are they? The class Mr. Poole is talking about, the class known as the Mississippi Choctaws. The treaty of 1830, article 14, provided that any of the Indians who wanted to stay in Mississippi and become citizens of the State might do so, but that if they ever removed to the Indian Territory they should not lose their right of citizenship. Now, I think it is the act of July 1, 1902, that provided for the identification and enrollment of full-blood Mississippi Choctaws by reason of their blood alone and that the mixed blood who had received a patent to land in Mississippi and had complied with the provision of the treaty should be enrolled, but that the mixed blood who had not complied with the provisions of the treaty could not be enrolled. The Interior Department held that the subsequent acts of 1837 and 1842, under which they were issued scrip, was a substantial compliance with the treaty of 1830, that those persons who received scrip were entitled to identification and enrollment.

Mr. STEPHENS. It is only the question of justice and right that the House is looking to.

STATEMENT OF MR. E. C. HILL, REPRESENTING THE CHOCTAW NATION.

Mr. HILL. It is not my purpose to detain the committee with an argument upon any matters that have been discussed before the committee. I simply want, in behalf of the Choctaw Nation tribe of Indians, to protest against any further opening of the rules or the passage of any bill that authorizes people to present any claims for any part of the land. And I say that for this reason—not that it is the desire of the Choctaw Nation or my desire to be unjust to anybody—I have no doubt that there are isolated cases where people, not a great multitude of cases, that the tribunal created by the Government to pass upon these matters have failed to include, that are bona fide cases. Here and there you will find a bona fide case of an Indian who was entitled to be upon the rolls and share in the distribution of the tribal property, and either through some fault of his own or through some fault somewhere he has failed to get upon the rolls.

Mr. STEPHENS. Don't you think the Government would be morally bound to make good that man's fault?

Mr. HILL. If it could be done—if these bona fide cases could be selected out.

Mr. STEPHENS. Could not justice be done them now? Isn't there quite an amount of land or property there that is undivided and isn't there a great deal of money coming to these Indians that is undivided?

Mr. HILL. Yes, sir.

Mr. STEPHENS. The Government has notice right now that these people are claiming it.

Mr. HILL. Yes, sir.

Mr. STEPHENS. And this matter will come up before future Congresses.

Mr. HILL. Yes, sir. There is the trouble about it. But there are people on the other side that are affected, too. Yet, I say, if only the people who are rightfully to share in the distribution of this prop-

erty could be selected and given their rights, the Indians or nobody else could object to it, because it would be right and it would be just. If any way could be provided by which the people who are honestly and rightfully entitled to share in this property—if any way could be provided by which that could be done, it ought to be done. But here is the trouble: The experience of individual cases shows that those people who are not now entered upon the rolls have made application there. If this bill passes it furnishes the same opportunity again, and every foot of property that you take from the nation down there or from these Indians and distribute it to anybody else it deprives them of that much.

Now, I would like to ask Mr. Ballinger, under section 2 of this bill, how many people would be authorized to bring suit?

Mr. BALLINGER. Every person who had the right.

Mr. HILL. How many of them?

Mr. BALLINGER. I am frank to say that I believe under the provisions of that bill there will be upward of 10,000 people.

Mr. HILL. Yes; and twice that, and in every State of this Union. Under the provisions of this bill anywhere in this Union a man has nothing to do but to file his petition and claim that he is an Indian, and that in any United States court in this Union, and have his rights tested there, and look at the enormous expense, Mr. Chairman, that a thing of that sort would bring about.

Mr. STEPHENS. Would you be willing to amend that bill so as not to only apply to citizens in Oklahoma?

Mr. HILL. Gentlemen of the committee, I asked the chairman for five minutes, and I don't want to run over the time. This is the first time I ever appeared before you with reference to this matter. I will be candid with Colonel Stephens, whom I know well, for whom I have the highest regard, and I have known him for a number of years. I used to live in his district and have got lots of folks living there now. But I will be candid with him and say I would pass that bill for the reasons I have stated, that if the people who are interested in this property only would be affected. Now, gentlemen, you overlook this fact, that for years and years down there the Federal courts have tried to give every man his opportunity to come in and prove his rights—no man has been denied his rights—and time after time Congress by act has extended that right and notified these people to come in and prove up their rights.

Congress has given the means for that purpose. Congress thought and the Federal Government has thought it would be best to put that under the direction of the Federal Government, and they created the power to go and present these matters and to pass upon the rights of these people, and they did it. They have passed upon the rights of thousands and thousands of people, and, gentlemen of the committee, thousands of the people have been denied citizenship rights there by the Dawes Commission. It is a power created by Congress to pass upon those things. And if this bill is passed all of those people, and I believe Mr. Ballinger will admit that every man who made application before the Dawes Commission and was rejected can bring suit under this bill——

Mr. BALLINGER. Every man who claims a right in this property will have an opportunity to assert that right in court and have his

case heard in open court and have his right legally and constitutionally determined.

The CHAIRMAN. Pardon me one question. Of course it could only be a matter of rumor, in case there was any such rumor, but have you heard any complaint to the effect that any persons were admitted to the rolls who were not entitled to enrollment?

Mr. HILL. Yes, there has been a great deal of complaint. I had intended to suggest it.

Mr. CHAIRMAN. I only ask you as going to the integrity of the court. You know how it occurred.

Mr. HILL. I do not mean by my answer to imply that anybody was admitted improperly, you will understand that, but I do mean that thousands of cases that the Commission had to consider, it was given authority to inquire into these things, and I have never heard that people have been admitted to the rolls and have a share in the distribution of the property that ought not to be there.

Now, gentlemen, this point upon what is charged to be the fraud of the court, corruption upon the part of the court. This is a very serious matter. I had nothing to do with the court one way or the other. I didn't have but one little old case before it, and I lost that, and that was the end of my connection with it. So I had nothing to do with the court one way or the other. But I do say this, and I am frank to say it, that if a corrupt court has denied anybody their rights then they ought to have a hearing, if a corrupt court has done it. But I do say that a court appointed by the President of the United States, men at least particularly of a kind and character and standing and their appointment ratified by the Senate, I do say that before such a stigma of that sort is cast upon the members of that court there ought to be some substantial proof, and that fact at least should be thoroughly established. And if it is thoroughly established that that court was corrupt or has acted corruptly, I believe every man who has been turned down by the court ought to have a hearing. I believe that is the right course, and I don't believe any man ought to be denied his rights by people acting corruptly, because the people quite generally ought to have confidence in a court who are there to administer justice, and they ought to act thoroughly and impartially, and are supposed to do so.

Mr. STEPHENS. Is it true that there was between two and three thousand of these people that were put upon the rolls that had the judgments of the Federal courts of the country there that were rejected by the citizenship courts?

Mr. HILL. I understand that there are large numbers. Perhaps it may be that many that had secured judgments in the United States district courts and afterwards were denied citizenship by the citizenship court. But you must remember there was reason for the creation of that citizenship court. These judgments were secured before that court was ever created. Congress thought there was some necessity for the creation of that citizenship court to review those judgments, and reasons were urged upon Congress as to why that court ought to be created, and I don't know what they were, I had nothing to do with it one way or the other, yet Congress did decide in its judgment and in its wisdom that that court ought to be created to review these judgments, and it did so. And now this

court, which they charge acted corruptly, this court denied hundreds and perhaps as many as two or three thousand who had secured judgments, denied them citizenship rights.

Mr. STEPHENS. Isn't it true that a great number of those people who were on the rolls never were cited before the citizenship court at all, but they took them up in blocks—a block of three or four or five hundred or a thousand at a time—and that they were all put together in a class and it was decided that that class should be deprived of their judgments, and the clerk or somebody else, I don't know who, would run over the list and throw them out, when the person never had been cited in the court; they had never been called in court at all, and therefore the judgments were annulled without their being before the court upon citation?

Mr. HILL. I never heard of that.

Mr. STEPHENS. The records of the court will show that to have occurred. There are hundreds of those people who had judgments in their favor rendered in the United States courts in the regular way, that stood there as citizens of the country, and who never have appeared in that court, yet by some false construction of the statute they have lost their rights and everything they have got in the world.

Mr. HILL. As I said, I had very little to do with that court; I had no business before it, and had very little to do with the lawyers there generally. McAlester took a great deal of interest in that court, especially when it was first organized. There were constant trials before that court of these citizenship cases, and nearly all of the lawyers in McAlester were more or less engaged in those trials, and if any man was ever denied his rights and his opportunity to be heard there, either personally or through his attorney, I never heard of it. Understand, Colonel, I am not saying that that is not true. You will understand that if anything of that sort ever occurred, I never heard of it. I forget now how long that court lasted——

Mr. WARD. About eighteen months, I think, from the time it organized until it went out of existence.

Mr. HILL. That court held almost daily sessions for eighteen months at McAlester and Tishmingo, and if there was any man in that country that did not have opportunity to come before that court I never heard of it.

Now, gentlemen of the committee, I simply want to say this to you in good faith and in behalf of the Choctaw Indians, whom I represent; I have nothing to do with the Chickasaws; I have no authority to represent them and I do not represent them, I simply want to ask the most careful consideration of this bill and its results before you pass it. Now, Mr. Chairman, this has got to end some time. As Colonel McGuire knows, the people of our country have been praying generally that this thing might finally be wound up, that there might be an end and a settlement of it, and now the extension of it is proposed in this bill. For ten or twelve years these people had their opportunity to establish their rights there. The tribunals have been open to them at all times, and not only have the representatives of the Commission, under the directions and instructions of the Interior Department, given them notice to come, but the Commission have gone personally and held sessions at various points of the country, and sent its representatives there and by every means pos-

sible undertook to give proper notice to the people who are claiming rights of citizenship to come in and establish their rights before the rolls were closed. It is claimed that there were thousands of people that did not do that, that did not have that privilege—hundreds, as Captain Poole said, it may be thousands, in addition to those who were denied by the citizenship court.

Mr. POOLE. No, sir; you misunderstand me. My people applied to the Commission, and the proof and the records are here for anybody to see them, and they were turned down, and they never have had an opportunity to appear before the court. I don't call the Commission a court. I suppose you gentlemen term that a court, but this was a commission and not a court.

Mr. HILL. The Supreme Court of the United States has held that in a tribunal of that sort for the determination of these special matters their action is final. Many times these questions have arisen in the courts, and our Federal courts there have refused to take jurisdiction where these questions of citizenship were involved, for the reason that the tribunal created by Congress had jurisdiction of that, and not the courts. But they have had the tribunal there created by law, which has tried as best they could to determine the rights of the people in that country, and I say that in the thousands of cases that have arisen there they may have made mistakes, and probably did, but I believe, take it as a whole, that they have done the very best that could have been done under the circumstances.

If you pass this bill you will allow men anywhere—in Alaska and anywhere else in the United States—they can sue these people, and this bill requires that the nation shall be served with notice. It is their property that is to be taken. If these people appear and secure a judgment it is the property of these Indians that is to be taken by these people from all over the United States, and so I say it would be extremely unjust. Ordinarily, if you want to sue a man the law requires that you have got to sue him where he lives, even in the precinct where he lives, if you are going to institute a proceeding against him and bring him to court, yet under the provisions of this bill you allow the Indians to be dragged all over the United States, wherever they may see fit to sue them. I respectfully ask at the hands of the committee and of Congress a consideration of this bill and of its results before its passage is recommended.

The CHAIRMAN. This concludes the hearings that have been asked for, and the committee will consider itself adjourned.

Thereupon, at 4 o'clock p. m., the committee adjourned.

O

LB Je '08

LB Je '08